United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2316

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P/S

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

- against -

ALAN C. SOLOMON,

Defendant-Appellant.

On Appeal from the U.S. District Court for the Southern District of New York.

APPELLANT'S APPENDIX

Volume I, pp. 1a – 200a

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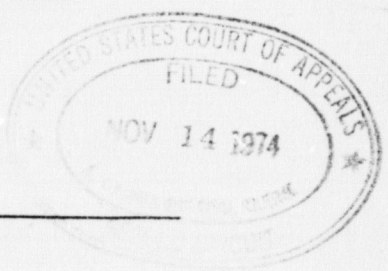

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Relevant Docket Entries
73 Cr. 693

Date	Proceedings
7/16/73	Filed indictment.
8/27/73	A.C. Solomon - Filed notice of appearance by Nickerson, Kramer, Lowenstein, Nessen & Kamin, Esqs., 919 Third Avenue, NYC 10022 (688-1100)
9/24/73	Alan C. Solomon - Filed affdvt. and notice of motion for an order supressing testimony given by deft. on 5/17/73
9/24/73	Alan C. Solomon - Filed defts memorandum of law in support of motion to suppress.
4/17/74	Filed Opinion #40609 - For reasons indicated--The motion to suppress is, therefore, denied since no such showing has been made. However, if defendant so moves, he will be granted an evidentiary hearing on the eve of trial to enable him to establish that a conspiracy which would warrant suppression of the statement existed. So ordered Carter, J.(m/n)
6/13/74	Alan C. Solomon (atty. present) Suppression Hearing begun before Carter, J.
6/14/74	Hearing continued and concluded, Dec. Res. - Carter, J.
7/3/74	Alan C. Solomon - Filed defendants waiver

Date	Proceedings
7/3/74	Alan C. Solomon - (Atty.present) deft. waives trial by jury. NON-JURY TRIAL begun on count 7 only before Cart, J. Trial concluded. Deft. guilty on count 7 - P.I.S. ordered. Sentence adj. to Sept. 9, 1974 at 9:30 AM. Deft. continued R.O.R. -- Carter, J.
6/28/74	Alan C. Solomon - Filed Opinion #40903 ...denying defendant's motion to suppress. - Carter,J. m/n
8/1/74	Alan C. Solomon - Filed endorsement that defendant's motion to reconsider in re suppress is denied. So ordered - Carter,J. m/n
7/23/74	Solomon - Filed transcript of record of proceedings dated 6/13-14/74
9/12/74	Solomon - Filed JUDGMENT (atty. present) It is adjudged the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of ONE(1) YEAR. A committed fine of $5,000 to be paid during the terms of his probation, subject to the standing order of probation of this court. Condition of probation is to work at least 5 hours a week for the term of his capacity involving expenditures of energy and of time and the contribution of mind, with a group of under privileged persons. The program to be worked out with the probation officer and approved by the court, and to involve periodic reports to the court concerning its progress. Counts 1, 2,3,4,5,6,8,9, 10,11,12,13,14,15 and 16 are dis-

Date	Proceedings
9/12/74 (Cont.)	missed with the consent of the Government on the motion of the defendant's counsel - Carter,J (copies issued)
9/23/74	Filed Notice of Appeal for Deft. Alan C. Solomon from a judgment of conviction of this Court entered on 9/12/74 (m/n)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE, and ROBERT K. LYNN, : 73 Cr.

Defendants. :

- x

The Grand Jury charges:

1. From on or about the 1st day of January, 1971, up to and including the 4th day of June, 1973, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, the defendants, and Weis Securities, Inc., (hereinafter referred to as Weis), named herein as a co-conspirator but not as a defendant, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit certain violations of federal law, to wit, to violate Title 18, United States Code, Sections 1341 and 2, Title 15, United States Code, Sections 78j(b) and 78q(a) and 17 C.F.R., Sections 240.10b-5 and 240.17a-3.

OBJECTS OF THE CONSPIRACY

2. Securities fraud: It was a part of this conspiracy that the defendants and co-conspirator Weis unlawfully, wilfully and knowingly would and did, directly and indirectly, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce, to wit, the telephone, and by the use of the mails,

a) employ devices, schemes and artifices to defraud, and

b) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon actual and prospective customers, creditors and shareholders of Weis.

3. Mail Fraud: It was further a part of this conspiracy that the defendants and co-conspirator Weis, having devised a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses and representations, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice, and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail, certain matters to be sent and delivered by the Postal Service, to wit, false and fraudulent statements of the financial condition of Weis.

4. False Books and Records: It was further a part of this conspiracy that the defendants and co-conspirator Weis (a member of a national securities exchange and a broker or dealer registered pursuant to the Securities Exchange Act of 1934, as amended) did unlawfully, wilfully and knowingly falsely make and keep, and did cause to be falsely made and kept, books and records of Weis which purported to represent the true, accurate and current financial condition of Weis, when in truth and in fact, as the defendants then and there knew, the aforesaid books and records were materially false and fraudulent.

5. During the aforesaid period and specifically between March, 1972, and June 4, 1973:

a) Co-conspirator Weis was a brokerage firm and member of the New York Stock Exchange and the American Stock Exchange, having its principal place of business at 17 Battery Park Place, New York City, New York. Weis (formerly known as Weis Voisin & Cannon Co., Inc., and as Weis Voisin & Co., Inc.) transacted a business in securities on its own behalf and on behalf of approximately 50,000 customers and/or accounts. In the aforesaid period, Weis experienced substantial losses which endangered its net capital and significantly impaired its ability to remain solvent. As of May 24, 1973, Weis was suspended as a member of the New York and American Stock Exchanges. On June 4, 1973, Weis was placed in receivership under the Securities Investor Protection Corporation (SIPC).

b) The defendant ARTHUR J. LEVINE was the Chairman of the Board and Chief Executive Officer of Weis and, as such, had and exercised overall responsibility for Weis' operations.

c) The defendant SOL LEIT was the President and the Chief Operating Officer of Weis and, as such, had and exercised the primary responsibility for the day-to-day operation of Weis, including the preparation and maintenance of current and accarate books and records. In his capacity as President of Weis, the defendant SOL LEIT reported to the defendant ARTHUR J. LEVINE, the Chairman of the Board.

d) The defendant ALAN C. SOLOMON was the Treasurer and an Executive Vice President and a Director of Weis. As Treasurer, the defendant ALAN C. SOLOMON was the chief financial officer of Weis, responsible for signing financial reports and statements of financial condition to be sent to customers and submitted to various regulatory agencies including, but not limited to, the United States Securities Exchange Commission, the New York Stock Exchange and the American Stock Exchange.

e) The defendant JOEL KUBIE was the Comptroller and an Executive Vice President and a Director of Weis. As Comptroller, the defendant KUBIE had responsibility for the accounting and related departments of Weis. The defendant KUBIE reported to the defendant LEIT, the President of Weis.

f) The defendant ROBERT K. LYNN was the Assistant Comptroller and a Vice President of Weis. The defendant LYNN was a subordinate of the defendant KUBIE until March 30, 1973, when the defendant LYNN became the Comptroller of Weis.

THE MEANS

6. Among the means by which the defendants and co-conspirator Weis would and did carry out the aforesaid conspiracy were the following:

a) The defendants LEVINE and LEIT would and did agree to fraudulently inflate and falsify the profit and loss statement of Weis for its fiscal year ending May 26, 1972 by reporting earnings of $1,300,000 whereas in truth and in fact as they then and there well knew Weis had actually suffered losses in the period in excess of $1,500,000.

b) Thereafter the defendants LEVINE and LEIT would and did instruct their employees, including the defendants KUBIE and LYNN, to falsify Weis' books and records to justify fraudulent statements of financial condition.

c) The defendants LEVINE, LEIT, KUBIE and LYNN would and did cause wholly fictitious entries to be made and maintained in the books and records of Weis, which entries not only fraudulently inflated the earnings, but also inflated the capital and assets of Weis as well as falsely understated Weis' liabilities.

d) The defendants LEVINE, LEIT, KUBIE and LYNN would and did fraudulently conceal from Weis' auditors, Touche, Ross & Co., the existence and nature of the aforesaid fraudulent books and records and, in addition, would and did create directly and indirectly wholly fictitious documentation for the aforesaid fraudulent entries.

e) The defendants LEVINE, LEIT, KUBIE and LYNN would and did cause to be prepared "woodwork" schedules, which schedules detailed what had been concealed in the "woodwork" -i.e. the items that had been falsified on Weis' books and records or not included therein. Thereafter, the defendants LEVINE, LEIT, KUBIE and LYNN would and did meet and discuss the aforesaid "woodwork" schedules.

f) The defendant SOLOMON, upon being informed of the true facts, would and did meet with the defendants LEVINE, LEIT, KUBIE and LYNN and did thereafter participate in the falsification of Weis' books and records.

g) The defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN would and did mail and cause to be mailed to all of Weis' customers and/or accounts, statements of Weis' financial condition, which were materially false with respect to the assets, liabilities and retained earnings, among other items.

h) The defendants, LEVINE, LEIT, SOLOMON, KUBIE and LYNN would and did cause to be filed with the Securities and Exchange Commission, New York Stock Exchange and American Stock Exchange false financial reports, to wit, a false SEC X 174A-5 Report and false Joint Regulatory Reports.

OVERT ACTS

In furtherance of the said conspiracy and to affect the objects thereof, the defendants and co-conspirator Weis did commit the following overt acts, in the Southern District of New York:

1. On or about the 28th day of April, 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices, 17 Battary Park Place, New York City, New York and there caused a reserve account of and for Sheiman, Hochstin and Trotta to be written-off and a corresponding amount to be fraudulently credited to various and sundry income accounts in order to falsely inflate income by an amount in excess of $625,000.

2. On or about the 24th day of May, 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and caused entries to be made in an insurance claim account receivable relating to Winslow, Cohu and Stetson and entries to be made in the corresponding amount to various and sundry income accounts in order to falsely inflate income by an amount in excess of $500,000.

3. On or about the 25th day of May 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and there caused two checks to be issued, one for $125,735.25 to Arlen Properties and the second for $200,000 to 17 Battery Place Associates, which amounts were recorded on Weis' books and records as a payment against liabilities. The defendants LEVINE, LEIT, KUBIE and LYNN thereafter at Weis' New York City office, did cause the former check to be redeposited in Weis' bank account and the latter check to be exchanged with a check of an associate of the defendant LEVINE, the proceeds of which

checks were fraudulently credited to Weis' income, thereby falsely inflating Weis' profit by an amount in excess of $325,000. 11a

4. On or about the 26th day of May 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and there fraudulently inflated and caused to be fraudulently inflated, the valuations of securities held in Weis' proprietary account as of said date, thereby falsely inflating unrealized gains to Weis in the approximate amount of $250,000.

5. On or about the 11th day of July 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' New York office and there caused to be filed with the New York Regional Office of the SEC a false X-17A-5 report of financial condition.

6. In or about the end of July, 1972, or the early part of August, 1972, the defendants LEVINE, LEIT, and KUBIE were present at Weis' offices and there caused, directly and indirectly, a false statement of financial condition to be mailed to all Weis' customers and/or accounts.

7. In or about the end of December, 1972, or the early part of January, 1973, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' office in New York City and there caused to be mailed to all customers of Weis a statement of financial condition as of the end of the first half of Weis' fiscal year, which statement was false and fraudulent.

8. In or about January, 1973, the defendant SOLOMON caused false entries to be made on the books and records of Weis reflecting a proprietary position in Pan American 4 1/2% bonds to mature in 1984, when in fact Weis' position was in similar bonds but with a substantially lower value, which fraudulent entries falsely inflated Weis' unrealized gains by approximately $200,000.

9. On or about the 6th day of February, 1973, the defendants LEVINE, LEIT, KUBIE, SOLOMON, and LYNN were present at Weis' office in New York City and there directly and indirectly caused a false entry to be made in the books and records reducing the amount of bank loans payable by Weis by $1,500,000 and thereafter fictitiously caused various and sundry income accounts to be credited with the corresponding amounts, thereby fraudulently inflating Weis' income for the period by $1,500,000.

10. In or about the middle of February, 1973, the defendants LEVINE, LEIT, KUBIE and LYNN were present in Weis' offices in New York City and there directly and indirectly caused an employee in the accounting department,Michael Fishbein, to be fired from his job because said employee had raised questions about the aforesaid fraudulent $1,500,000 write-off of the bank loan account referred to in paragraph 9 above.

11. On or about the 17th day of February, 1973, the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of January, 1973.

12. On or about the 17th day of March, 1973 the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of February, 1973.

13. On or about the 17th day of April, 1973, the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of March, 1973.

(Title 18, United States Code, Section 371.)

The Grand Jury further charges:

1. From on or about the 28th day of April, 1972, up to and including the 4th day of June 1973, in the Southern District of New York, Weis Securities, Inc., 17 Battery Park Place, New York, N.Y. (hereinafter "Weis"), a member of a national securities exchange, directly transacted business in securities directly with and for others not members of a national securities exchange and, further, was a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law [17 C.F.R. 240-17a-3(a)] to make and keep accurate and current books and records.

2. From on or about the 28th day of April, 1972, up to and including the 4th day of June 1973, and more specifically on or about the dates hereinafter described the defendants, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, unlawfully, wilfully and knowingly, did falsely make and maintain Weis' books and records in a fashion which represented that Weis' financial condition was sound and that Weis was earning substantial income when, in truth and in fact, as the defendants then and there well knew, Weis was in serious financial trouble and was suffering significant losses which substantially impaired, and threatened to impair, its ability to remain solvent, which books and records hereinafter listed, were not current and accurate as hereinafter described:

Count	False Entry	False Entry	Profit and Loss	Defendants
2	4/28/72	Write-off of Sheiman Hochstin & Trotta reserve account and credit of approximately $625,000 to income accounts	Inflated Weis' income in excess of $625,000	LEVINE LEIT KUBIE LYNN
3	5/24/72	Write-up in insurance claim receivable re Winslow, Cohu and Stetson and credit of $500,000 to income accounts	Inflated Weis' income $500,000	LEVINE LEIT KUBIE LYNN
4	5/25/72	Write-off of leasehold improvement liabilities and credit of Weis' income by two checks totalling approximately $325,000	Inflated Weis' income by approximately $325,000	LEVINE LEIT KUBIE LYNN
5	5/26/72	Inflation of valuations of securities held in Weis' proprietary account	Inflated Weis' unrealized by approximately $250,000	LEVINE LEIT KUBIE LYNN
6	2/28/72 3/30/73	Failure to accrue liability for rent for 13 months	Understated accrued expenses by approximately $540,000	LEVINE LEIT SOLOMON KUBIE LYNN
7	1/15/73 4/30/73	Recording Weis' purchase of Pan American 4 1/2% bonds, 1984, when, in fact, Weis had purchased bonds having a substantially lower value	Inflated Weis' unrealized income by approximately $200,000	LEVINE LEIT SOLOMON KUBIE LYNN
8	2/6/73	Recording of payment $1,500,000 in bank loans and credit of income accounts	Inflated Weis' income $1,500,000	LEVINE LEIT SOLOMON KUBIE LYNN
9	3/22/73	Recording of payment of $2,000,000 in bank loans and credit to income accounts	Inflated Weis' income by $2,000,000	LEVINE LEIT SOLOMON KUBIE LYNN
10	1/1/73 4/30/73	Recording of sale of stock not owned by Weis	Inflated Weis' income by approximately $250,000	LEVINE LEIT SOLOMON KUBIE LYNN

(Title 15, United States Code, Sections 78q(a) and 78f(f) and 17 C.F.R. Sections 240.17 Q 3, Title 18, United States Code, Section 2.)

COUNTS ELEVEN THROUGH THIRTEEN

The Grand Jury further charges:

1. From on or about the 1st day of January, 1971, up to and including the 4th day of June, 1973, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, unlawfully, wilfully and knowingly did, directly and indirectly, and by the use of the means and instrumentalities of interstate commerce and the mails, use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission.

2. The allegations contained in paragraphs 5 and 6 of Count One of this Indictment are repeated and re-alleged as though fully set forth herein as constituting and describing some of the means by which ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, committed the offenses charged in Counts Eleven through Thirteen.

3. On or about the dates hereinafter set forth in Counts Eleven through Thirteen, in the Southern District of New York, the defendants, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, unlawfully, wilfully and knowingly, by the use of means and instrumentalities of interstate commerce and the mails as hereinafter set forth, did employ devices, schemes and artifices to defraud, and did engage in acts, practices and courses of business which operated as a fraud upon actual and prospective customers, creditors and shareholders of Weis Securities, Inc. (hereinafter "Weis"):

Count	Date	Method of Communication	Recipients	Matter
11	Late July or early August 1972	Mail	All customers of Weis	Audited balance shee prepared by Touche Ross & Co. for the fiscal year of Weis ending May 26, 1972.
12	Late December 1972 or early January 1973	Mail	All customers of Weis	Balance sheet of We: for November 1972.
13	Early April, 1973	Mail	All customers of Weis	Balance sheet of We: for February 1973.

(Title 15, United States Code, Sections 78j(b), 78f(f) and 17 C.F.R. §240.10-b(5); Title 18, United States Code, Section 2.)

COUNTS FOURTEEN THROUGH SIXTEEN

The Grand Jury further charges:

1. From on or about the dates hereinafter set forth in Counts Fourteen through Sixteen, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud actual and prospective customers, creditors, and shareholders of Weis Securities, Inc. hereinafter "Weis" and others, to obtain money and property from said persons by means of false and fraudulent pretenses and representations, and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon, certain matter to be sent and delivered by the Postal Service.

2. The allegations contained in Paragraphs Five and Six of Count One of this Indictment are repeated and re-alleged as though fully set forth herein as constituting and describing some of the means by which the defendants committed the Offenses charged in Counts Fourteen through sixteen.

3. On or about the dates hereinafter set forth in Counts Fourteen through Sixteen, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, unlawfully, wilfully and knowingly did cause to be delivered by mail, according to the direction thereon, to the persons hereinafter set forth, the matters hereinafter set forth:

Count	Date	Addressees	Matter
14	Late July or early August 1972	All customers of Weis	Audited balance sheet prepared by Touche Ross & Co. for the fiscal year of Weis ending May 26, 1972
15	Late December 1972 or early January 1972	All customers of Weis	Balance sheet of Weis for November 1972, for the first half of Weis' fiscal year.
16	Early April 1973	All customers of Weis	Balance sheet of Weis for February 1973, for the third quarter of Weis' fiscal year.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

1. Weis Securities, Inc. (hereinafter "Weis") was a brokerage firm, a member of the New York Stock Exchange and American Stock Exchange, and was registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law 17 C.F.R. 240-17a-5, to file, following the end of Weis 1972 fiscal year, a report of financial condition containing the information required by Form X-17A-5.

2. On or about the 11th day of July, 1972, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, JOEL KUBIE and ROBERT K. LYNN, the defendants, unlawfully, wilfully and knowingly did make, and cause to be made, statements in an X-17A-5 report of financial condition of Weis which statements were false and misleading with respect to material facts as follows:

a) Statements of the valuation of Securities held in proprietary accounts were falsely inflated.

b) Statement of retained earnings was falsely inflated by approximately $2,500,000.

c) Statement of leasehold improvement falsely overstated by at least $325,000.

d) Statement of commissions receivable on the last five trade dates falsely inflated.

e) Statement of insurance claim receivable re: Winslow, Cohu and Stetson and income falsely inflated by at least $500,000.

f) Statement of Sheiman, Hochstin & Trotta liquidation omnibus account and income falsely overstated by at least $625,000.

g) Statement of liabilities falsely understated by failure to report substantial liabilities.

h) Various and sundry asset and income items falsely inflated.

(Title 15, United States Code, Sections 78q(a) and 78(f) and 17 C.F.R. Sections 240.17a-5, Title 18, United States Code, Section 2.)

COUNT EIGHTEEN

The Grand Jury further charges:

1. Weis Securities, Inc. (hereinafter "Weis") was a brokerage firm, a member of the New York Stock Exchange and American Stock Exchange, and was registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law 17 C.F.R. 240-17a-5, to file, following the end of Weis' 1972 fiscal year, a report of financial condition containing the information required by Form X-17A-5.

2. On or about the 11th day of July, 1972, in the Southern District of New York, ARTHUR J. LEVINE, the defendant, unlawfully, wilfully and knowingly, did make and cause to be made a statement attached to the aforesaid X-17A-5 report of Weis, which statement was an oath and affirmation that to the best of his knowledge and belief the financial statement and supporting schedules were true and correct, whereas in truth and in fact, as the defendant LEVINE then and there well knew, said X-17A-5 report was materially false as hereinafter specified:

a) Statements of the valuation of securities held in proprietary accounts were falsely inflated.

b) Statement of retained earnings was falsely inflated by approximately $2,500,000.

c) Statement of leasehold improvement falsely overstated by at least $325,000.

d) Statement of commissions receivable on the last five trade dates falsely inflated.

e) Statement of insurance claim receivable re: Winslow, Cohu and Stetson and income falsely inflated by at least $500,000.

f) Statement of Sheiman, Hochstin & Trotta liquidation omnibus account and income falsely overstated by at least $625,000.

g) Statement of liabilities falsely understated by failure to report substantial liabilities.

h) Various and sundry asset and income items falsely inflated.

(Title 15, United States Code, Section 78q(a) and 78f(f) and 17 C.F.R. Sections 240.17a-5; Title 18, United States Code, Section 2.)

Foreman

PAUL J. CURRAN
United States Attorney

OPINION NO. 40609 DENYING MOTION OF ALAN C. SOLOMON (Carter, D.J.)

UNITED STATES DISTRICT COURT (Filed April 17, 1974)
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA,

Plaintiff,

- against -

ALAN C. SOLOMON, et al.,

Defendants.

73 Civ. 693

- x

FILED
U.S. DISTRICT COURT
APR 17 1 02 PM '74
S.D. OF N.Y.

APPEARANCES:

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Attorneys for Defendant
Alan C. Solomon

CARTER, District Judge

O P I N I O N

Defendant is being prosecuted on charges that he, along with others, as an officer and director of Weis Securities (Weis) knowingly caused false financial reports to be filed with the New York Stock Exchange (Exchange) and with the Securities and Exchange Commission (SEC) in an effort to conceal the fact that Weis had insufficient capital to continue its activities as broker-dealer as required by the Securities and Exchange Act of 1934 and the SEC's implementing regulations. Weis was a member of the Exchange, and as an officer of Weis, defendant was an allied member of the Exchange. The Exchange Constitution requires an allied member such as defendant to furnish information or to appear and testify before the Board of the Exchange under certain circumstances. Failure to appear to testify if called is grounds for expulsion or suspension from the Exchange. New York Stock Exchange Constitution, Article XIV, Section 9. Defendant was summoned to give testimony on May 17, 1973 before the Department of Member Firms of the Exchange. At the outset of that hearing defendant was advised that the subject of the inquiry was whether Weis was in compliance with the net capital requirements as promulgated in Rule 325

of the Exchange and whether defendant knew anything about the filing of false financial reports with the Exchange and SEC misstating Weis' capital situation. Defendant was represented by counsel and was aware that refusal to testify would result in his suspension from the Exchange. Shortly after the testimony of the defendant was given, it was turned over to the SEC. Thereafter a criminal investigation began and this indictment was returned on July 16.

Defendant moves to suppress the testimony given on May 17. It is argued that the testimony in question was obtained in violation of defendant's 5th amendment rights. The theory is that the Exchange was performing a governmental function in its investigation of Weis, and in the process used constitutionally impermissible coercion to obtain Solomon's testimony. Defendant has raised an appropriate question, but its resolution is not aided in my judgment by the broad reach which defendant asserts must be given to holdingsof the United States Supreme Court in Lefkowitz v. Turley, ____ U.S. ____, 39 L.ed.2d 274 (1973); Garrity v. New Jersey, 385 U.S. 493 (1967); and Uniformed Sanitation Men Association v. Sanitation Commissioner, 392 U.S. 280 (1968). Nor is the governments approach helpful in relying on cases

such as Rosee v. Board of Trade of the City of Chicago, 311 F. 2d 724 (7th Cir.), cert. denied, 374 U.S. 806 (1963), dealing with private, as opposed to governmental activity.

While the New York Stock Exchange is not a governmental agency, its functions and operations have been held to be sufficiently affected with a public interest to mandate that action taken by the Exchange in respect of its members must be consonant with procedural safeguards to insure fair dealing, Silver v. New York Stock Exchange, 373 U.S. 341 (1963). Indeed this court (MacMahon, D. J.) has held that when the Exchange is engaged in disciplinary proceedings against its members, it is performing a governmental function. Crimmins v. American Stock Exchange, Inc., 346 F. Supp. 1256, 1259 (S.D.N.Y. 1972). And see Intercontinental Industries Inc. v. American Stock Exchange, 452 F. 2d 935 (5th Cir. 1971).

Defendant contends that acceptance of the theory that the New York Stock Exchange was performing a public function in respect of its activities which resulted in defendant's May 17, 1973 statement, requires that the statement must be suppressed. I do not believe the matter can be resolved that readily. The law applicable to this case, as I see it, is not that enunciated in Lefkowitz v. Turley, supra, and cognate cases. Rather,

resolution of this case is governed by Smith v. Shay, 419 F. 2d 160 (9th Cir. 1969).

The Exchange, in requiring that its members testify before its Board or committees or face expulsion from membership, is not violating any constitutional rights of its members. While its activities may be affected with a public interest, it has no power to bring criminal proceedings and to grant immunity from prosecution to any of its members. Nor is the SEC here threatening defendant with losing his right to continue in the securities field unless he testifies. Thus Lefkowitz v. Turley is inapposite. Nor do I believe were defendant's constitutional rights infringed, absent a showing of bad faith, by the fact that the Exchange turned over to the SEC defendant's May 17th statement. If, however, the Exchange and the SEC had an arrangement or agreement that the Exchange would cooperate with the SEC in developing criminal charges against the defendant, that in this respect the Exchange would undertake its own investigation of the matter, secure the statements of defendant under the compulsion of Article XIV, Section 3, Constitution of the Exchange and then turn the statement over to the SEC to enable it to prosecute defendant, see Smith v. Shay, supra; and see United States v. Kordel, 397 U.S. (1970); then the defendant's motion would have merit. The critical issue

here is whether the Exchange and the SEC conspired to secure the statement of May 17 for subsequent use by the government in criminal proceedings against him.

The motion to suppress is, therefore, denied since no such showing has been made. However, if defendant so moves, he will be granted an evidentiary hearing on the eve of trial to enable him to establish that a conspiracy which would warrant suppression of the statement existed.

SO ORDERED

Dated: New York, New York
April 16, 1974

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

EXCERPTS FROM TRANSCRIPT OF HEARING ON MOTION OF ALAN C. SOLOMON (June 13-14, 1974) BEFORE CARTER, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before:
	HON. ROBERT L. CARTER,
vs.	District Judge.
ALAN C. SOLOMON,	
Defendant.	73 Cr. 693

New York, June 13,14, 1974

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
versus	
ALAN C. SOLOMON,	73 Crim 693
Defendant.	

New York, N. Y.

June 13, 1974 - 2:00 p.m.

Before

HON. ROBERT L. CARTER,

District Judge

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York
HENRY PUTZEL III, Esq.,
Assistant United States Attorney

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL, Esqs.,
Attorneys for the Defendant
ARTHUR B. KRAMER, Esq., of Counsel

- - -

THE CLERK: United States of America against Alan C. Solomon, defendant.

MR. PUTZEL: The Government is ready.

THE COURT: Defendant?

MR. KRAMER: Defendant is ready.

MR. PUTZEL: Good afternoon, your Honor. Might I ask for a brief statement from Mr. Kramer as to what he expects to establish at this hearing?

The reason I ask for that is, I reread your Honor's opinion, and I think that it narrows the issues in this case quite specifically. And then I read Mr. Kramer's letter, and it seemed to me what he stated that he was going to prove was somewhat broader, and just for my own guidelines I would kind of like to hear what is his essential claim at this hearing.

THE COURT: I don't recall Mr. Kramer's letter.

MR. PUTZEL: The phrasing in Mr. Kramer's letter that caught my eye was: "We believe that documents in our possession will show that the New York Stock Exchange and the SEC were working hand in glove on the Weis investigation", or words to that effect.

So far as I understand it, the thrust of the Court's opinion is whether there was an agreement between the Exchange and the SEC or an intent on the part of the

SEC to use Exchange-acquired testimony for purposes of a criminal investigation as sort of an end run around.

THE COURT: All right. That is precisely what my opinion was meant to convey.

MR. KRAMER: If your Honor please, I think the evidence will show that the Exchange and the SEC were involved in a joint investigative effort, and at the time Mr. Solomon was called to testify before the Exchange, the SEC, through the auspices of the Exchange, was in possession of information which indicated possible criminal violations and in fact were cranking up the apparatus for a criminal investigation.

They had in fact subpoenaed the Exchange to produce all transcripts of testimony taken by the Exchange in conjunction with the Exchange's investigation.

We will show it was really an integrated effort, although there may have been no express agreement on the part of the Exchange to take Mr. Solomon's testimony and to deliver it forthwith in exchange for the assistance of their investigation.

The Court might well infer in the course of events that there was such an implicit arrangement and that it existed at the time that Mr. Solomon so testified.

THE COURT: We can proceed if you will call your

first witness.

MR. KRAMER: Mr. Shields.

W I L L I A M E . S H I E L D S , called as a witness by the Defendant, being first duly sworn, testified as follows:

THE COURT: Mr. Kramer, is Mr. Solomon here?

MR. KRAMER: Yes. Mr. Solomon is here. This is Mr. Solomon.

MR. PUTZEL: Yes. The record should reflect that we have excluded our witnesses, by agreement.

DIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Shields, you are an employee of the New York Stock Exchange?

A Yes, sir.

Q What is your job title and what are your duties?

A I am a supervising coordinator. My duties are to surveil a certain number of member firms of the New York Stock Exchange as to their financial, operational and profitability situation.

Q Did you hold the same position in April and May of 1973?

A Yes; I did.

Q Do you have various members of the Exchange staff

who assist you in these surveillance duties?

A We have a team of people assigned to it, and there are other departments that interrelate with us in our function.

Q What other departments are there?

A We have an examiners division, which is a division of accountants that go out and review the books and records of firms, and we have among others an enforcement division that conducts investigations of possible violations of Exchange rules.

Q Do I understand you to say that you have a certain number of member firms for whom you are principally responsible in this surveillance function which you serve?

A Right.

Q And I take it in the spring of 1973 that one of the firms that you conducted surveillance activities with respect to was Weis Securities?

A That is correct.

Q Did there come a time in April of 1973 when you and other members of the New York Stock Exchange became aware of some capital problems which were confronting that firm?

A Yes.

Q When do you recall that that matter first came to your attention?

A The matter first came to the attention of the

Exchange on or about April 12th of 1973, when two officers of the firm met with a vice president of the Exchange and reported that they had a problem, that they were working to correct it and had hired their auditors to come in. We called our examiners to see the extent of the problem and follow it as the examiners developed the story.

By April 27th --

Q April 27th of 1973?

A I believe April 27, '73 was the date that we showed the first capital violation, having been a past capital violation, which, to the best of our knowledge, had been corrected.

Q It is a matter of court record here that the SEC moved for the appointment of a receiver for Weis Securities on May 24th of 1973, and I take it that between April 12, 1973 and May 24, 1973, as the head of the New York Stock Exchange team which was engaged in supervising the financial condition of Weis Securities, you were intimately involved in what was going on over there on a daily basis.

A Yes; I was.

Q And you customarily reported on your findings on a daily basis to other people at the Exchange?

A Yes; I did.

Q And that was pursuant to the regular, on-going

pattern of surveillance conducted in situations of this sort?

A Yes.

Q Whom did you report your day-to-day findings on the Weis situation?

A At that time it was to Paul Fitzgerald, who at that time was assistant director in the department; to Fred Stock, who was an assistant vice president; and to Mr. Robert M. Bishop, who was a vice president at that time.

Q I show you a copy of a memo --

MR. KRAMER: Will you mark this for identification, please.

(Defendant Exhibit A marked for identification.)

Q I show you defendant's Exhibit A for identification which is a copy of a memorandum which I obtained from the New York Stock Exchange files, dated April 12, 1973, which relates to the report by two Weis officials to the Exchange of some capital problems that they were then encountering, and I ask you if you can identify that memo.

A Yes. This is a copy of a memorandum supplied by Mr. Bishop to the Exchange.

Q And that was the first indication that you had that there was some bookkeeping problems?

A Yes.

Q And some capital problems of Weis?

A Yes.

MR. KRAMER: I offer it in evidence.

MR. PUTZEL: I am sure I have no objection. Do you have copies of these?

MR. KRAMER: Yes; I do.

MR. PUTZEL: If you could give me copies, I would appreciate it.

MR. KRAMER: All right. As we offer them.

MR. PUTZEL: I have no objection.

THE COURT: Received.

(Defendant Exhibit A for identification received in evidence.)

Q This memorandum states at the second page, Mr. Shields:

"Immediately on returning to the Exchange, I asked George Beliakow to assign a good team to this effort. He assigned Aubrey Womack and Martin Hobby. Mr. Beliakow and these two examiners then met with me. I sketched out exactly what had been told me by Messrs Levine and Leit and directed them to get in touch with Touche, Ross and begin an examination the next morning.

"Messrs Womack and Hobby did go to Weis on April 13th with the Touche, Ross people."

I take it that Messrs Womack and Hobby are accountants on the staff of the Exchange.

A They are Exchange examiners, yes.

Q And the function of an Exchange examiner is to review the books and accounts of member firms?

A Exactly.

Q And I take it that those examiners stayed with that examination through the April and May period?

A There were some changes in personnel assigned. Jack Womack, Aubrey Womack stayed, assigned to it throughout the entire investigation. Mr. Hobby was assigned for a week or two and then was replaced by somebody else.

Q I take it that during this period you were in close contact with Mr. Womack as to the results of the investigation of the Weis books and records.

A I would receive reports as anything was developed, which at that time period may be once a week or once every several days, rather than on a daily basis.

MR. KRAMER: Would you mark this for identification, please.

(Defendant Exhibit B marked for identification.)

Q Mr. Shields, Defendant's Exhibit B for identification is a copy of a memo that I obtained from your files several days ago. Would you be good enough to tell the Court

in general what its contents are.

A It was a memorandum from myself to Paul Fitzgerald, my immediate superior, dated April 26, 1973, and to the effect that we had found certain adjustments to the firm's capital, that the firm's expenses had been understated by two and a half million dollars. We were showing a capital ratio as of January 31st of 1,241 per cent and a margin ratio of 1,174 per cent; the examiners would be continuing to review the firm's figures to get final figures for a margin figure.

Q Mr. Shields, is it a fact, or am I right in inferring from the first paragraph of this memorandum that as of that date, that is, April 26, 1973, the Exchange had become aware of the fact that there was a $2,500,000 bookkeeping error on the books and records of Weis Securities?

MR. PUTZEL: Did you say billion or million?

MR. KRAMER: Million.

A We knew of the difference at the original meeting on April 12th, and the Exchange was to report that their books were overstated by two million dollars because of improper bookkeeping entries.

Q So this does not represent any new input in terms of what your own examiners had developed in the period between April 12th and April 26th?

A It is a slight difference, a slight addition of bringing it up from two to two and a half, but nothing material, no.

MR. KRAMER: I offer Defendant's Exhibit B in evidence.

MR. PUTZEL: No objection.

(Defendant Exhibit B for identification received in evidence.)

Q There appears to be a handwritten note on the corner of this memorandum, Mr. Shields, to the effect -- and I can't read it, since the xerox is a little unclear, but it seems to be a note from Mr. Fitzgerald to you to notify the SEC and SIPC of this situation.

A Yes.

Q And another memorandum which you produced indicates you did first notify the SEC on April 27th of this situation.

A Yes.

Q Do you remember in general when it was that you advised the SEC of it and to whom it was that you spoke?

A On April 27th, the figures available to us show that the firm had had a capital violation which to the best of our knowledge was corrected. We are required to report a capital violation to the SEC and to SIPC. I reported to

Mr. William Finnigan of the SEC's Washington office that we had discovered a capital violation which appeared to be corrected but that our examiners were continuing to work at the firm to develop a current capital position.

Q What was Mr. Finnigan's position at the SEC?

A I am not sure, but he was our normal contact on such matters.

Q When you say "he was our normal contact", you mean that you typically were under a duty to advise the SEC of situations where you discovered a member firm was in capital violation?

A We are required by SEC rule, and the member firms are to report capital violations when they are discovered.

Q And you were in this instance following what was standard procedure --

A Yes.

Q -- of advising the SEC when you -- you being the New York Stock Exchange -- determined that a member firm was in capital violation?

A That is correct.

Q That was a first communication that you had with anyone at the SEC concerning the Weis situation?

A Yes; it was.

Q And you merely reported to Mr. Finnigan, if I

understand you, that the firm had had a capital problem. Did you also tell him about the bookkeeping errors which had been discussed with you and Mr. Bishop on April 12th?

A We discussed it in the terms of which we were then aware, which was that we knew there was a bookkeeping problem; we did not know the cause of it; the firm had reported it to us and explained the explanations supplied us by the firm.

Q How long did the conversation last?

A Probably five or ten minutes.

MR. KRAMER: I offer this.

MR. PUTZEL: No objection. In fact, to save time here, I really for the purposes of this hearing have no objection to your offering any of these memoranda from the files of the New York Stock Exchange.

MR. KRAMER: Fine. I will introduce them, and give you a copy as we get to each one.

MR. PUTZEL: That is fine.

(Defendant Exhibit C received in evidence.)

Q Defendant's Exhibit C is a memorandum dated May 1, 1973 from Mr. Shields to Mr. Fitzgerald and Mr. Stock at the Stock Exchange and relates to his conversation with the SEC respecting Weis Securities.

MR. KRAMER: In the memorandum there is a brief

summary of Mr. Shields' conversation with William Finnigan of the Washington office of the SEC on April 27th, about which he has testified.

Q The memorandum, Mr. Shields, goes on to state:

"I later met with Messrs John Youngs and Charles Dorrler of the SEC and reported the above."

I wonder if you would be good enough to tell us who those two gentlemen are and what the nature of your contact with them was.

A John Youngs and Charles Dorrler were two representatives from the Washington office of the SEC, who happened to have been at the Exchange that week on a totally separate matter. When they were informed that we had reported a potential capital violation they asked to be informed of the same facts.

Q Were they subsequently involved in the Weis investigation in any way?

A Not at all, as far as I know.

(Defendant Exhibit D marked for identification.)

Q Mr. Shields, that exhibit which you have before you, Defendant's Exhibit D, is another one of your memoranda, aso dated May 1, 1973, and it speaks to a further conversation with Mr. Finnigan of the SEC, if you will look at the bottom of page 2.

You kept Mr. Finnigan apprised of the information you set forth in that memorandum and did so in this May 1st telephone call?

A Yes; I did.

Q I take it at this point, that is, on May 1, 1973, the only information which had been reported to you from the Exchange examiners who were conducting their investigation of the books and records of Weis Securities was that the firm was still in capital compliance as of that date.

A Not exactly. They had reported that they were showing a violation as of March 30th. They did not know what the capital was at May 1st, but they did know that certain events had taken place which if they were the main events that had taken place and nothing else, the firm would be in capital compliance as of May 1st.

So we thought that they were, but we did not know it for a fact.

Q That was because the firm was engaged throughout the month of April under prodding from you to bring in new capital?

A I don't know if any new capital had come in before May 1st, but we were urging them to take corrective action to improve their capital ratio, and that can be done in a number of different ways.

Q What are some of the different ways that you were pushing Weis to improve their capital position?

A Well, in this memorandum we mentioned that there was a capital charge of $600,000 that was no longer applicable to the firm. That was in relationship to an underwriting that the firm was in on March 30th, and in computing capital, if a firm has long proprietary positions or a commitment to purchase them, we take what we call a haircut charge and reduce the value of those securities. The charge at March 30th was $600,000.

We understood that that underwriting had since gone, the securities had sold out, there was no longer a security position. So the firm's capital would have improved by that $600,000.

We also had reported to us that the firm had liquidated other proprietary positions and reduced their aggregate indebtedness, thereby improving their capital position by another half a million dollars.

Q Is it fair to say, Mr. Shields, that starting with the visit of the Weis principals, Levine and Leit, to the Exchange on April 12, 1973, that the Exchange realized it had a serious problem on its hands with Weis Securities, that the firm was in danger?

A No. On April 12th, we had a report from management

that an employee might have caused a problem but that the firm had sufficient capital to withstand the problem. Our sending the examiners was playing it safe, to make sure that it wasn't worse than was reported to us. It was later on, towards April 26th and 27th, that we began realizing that we did have a problem.

Q But towards the end of April, you realized that this firm was in trouble?

A Yes.

Q And I take it from the end of April up until the end of May that the principal aim of the examination and you as the principal party trying to effect that aim was to try to help Weis improve its capital position and to effect a merger with another member firm.

A We were directing management to take corrective actions to improve its capital and to try to push the closing of a merger that had been worked on for several months.

Q At any rate, up until the end of the month, beginning of May, had you had any further particulars as to any misreporting in the books and records of Weis other than this $2,500,000 understatement of expenses?

A That is correct.

Q And so far as the Exchange knew at this point,

that may or may not have been the result of any fraudulent activity on the part of Weis employees?

A That is correct.

Q It might have been in the negligence area, in other words?

A Yes. Our examiners were finding adjustments to the firm's capital, but we did not know the cause, whether they were errors or something done intentionally.

Q There came a time early in May when a man in the accounting department of Weis reported to you that there had been intentional rigging of the Weis books and records; is that correct?

A One of the people in the accounting department made a reference to one of our examiners that he intended to cooperate with the Exchange and would not go to jail for the firm. We then asked the person to come on the record so that we could get his statement, so we could discover what other problems there were in the capital area.

Q And the person that you are referring to is one Robert Lynn?

A Yes.

Q He was at that time the controller of Weis Securities?

A The controller or acting controller, one or the

other.

Q And the word came to you through which of your examiners?

A Mr. Womack.

Q Am I correct in assuming from this memorandum of yours dated May 9, 1973 that the first time that --

THE COURT: Mr. Kramer, let us mark that.

MR. KRAMER: Surely, and I will offer it in evidence.

(Defendant Exhibit E marked for identification.)

THE COURT: Mr. Putzel has indicated he does not object, so they are all in evidence.

(Defendant Exhibit E for identification received in evidence.)

Q Defendant's Exhibit E refers to a conversation that Mr. Womack had with Bob Lynn "yesterday in which Joel Kubie had left the firm because there was no place left to hide the figures and that they -- the firm -- had determined to use the bank loans to hide the unrecorded expenses.'

"Bob made an additional statement that he had told Saul Leit that he did not intend to go to jail and would cooperate fully with the Exchange examiners."

That is the conversation that you referred to in your earlier testimony?

A Yes.

Q And was that the first indication, Mr. Shields, that you know of to the exchange of any fraudulent entries having been made in the books and records of Weis Securities?

A Yes.

Q What activity ensued on your part after having been so apprised of that information?

A We started it up the line internally in the Exchange. We were working on new capital that was supposed to come into the firm and were careful to get proper knowledgeability letters from the lenders, that they were aware of what we were finding before they made their investment, and arranged with our at that time conduct division, the enforcement division, to look into the matter, to try and help us find out what additional areas there might be which would cause capital problems.

We were also interested in determining who was involved so that on an on-going basis in trying to protect the customers we would be dealing with the right people at the firm whom we could trust.

Q Trying to identify the wrongdoers and get them out of the business as soon as possible: that was part of it?

A No. The main thing was, as we are dealing with the firm on a day-to-day basis, to bring in new capital and have

disclosure made to those capital contributors and to arrange a merger that was going to protect the customers; to make sure the persons we were speaking to at the firm could be trusted. That was the main thing we were trying to do with the firm, was to make sure the customers were going to be protected.

Q Very well. You also involved immediately your so-called enforcement division?

A Yes. They were experienced interrogators, and we wanted to use their expertise in developing the facts, and they could, of course, also look into it for possible charges at a later time.

Q Possible --

A Disciplinary action by the Exchange at a later date.

Q Who in the enforcement division, if you know, was assigned to head up this investigation?

A I dealt with Mr. Stuart Nelson, who I believe assigned us Pape, special counsel, to handle the investigation.

Q And what was Mr. Nelson's title at that time?

A He was the assistant vice president in charge of the conduct division.

Q Of the conduct division of --

Q -- which has since changed its name to enforcement

division.

Q And Mr. Pape was the attorney --

MR. PUTZEL: Could we have for the record whether it was the conduct division or enforcement division?

THE WITNESS: At that period of time it was the conduct division.

Q But the same division now is known as the enforcement division?

A Right.

Q There has been no change in function?

A No.

Q It was just a change in name?

A Yes.

Q Mr. Shields, Mr. Pape was an attorney on Mr. Nelson's staff in the then known conduct division?

A Yes.

Q And the records of the Exchange show that Mr. Lynn was first interviewed by an attorney in the conduct division at the Exchange on May 9, 1973. Does that accord with your own recollection of the facts?

A I am not sure. I don't think so. I think it was a couple of days later, but I may bemistaken.

Q I am not talking about his first on-the-record interrogation; I am talking about any interrogation of Mr.

Lynn.

A I am not sure.

Q Did you advise anybody at the SEC on May 8th or May 9th of what you had learned concerning Mr. Lynn's revelations?

A We on a daily basis, speaking to both the Commission and SIPC, reported what allegations we had received and reported that we would of course work to try to verify these through our examiners.

Q And some of these conversations you personally had with people at the SEC?

A Yes.

Q Now you are talking to people in the New York Regional Office of the SEC?

A For a while we are talking to both New York and Washington.

Q And do you recall to whom it was you first spoke in New York about what now appeared to be a fraudulent scheme to alter the books and records of Weis?

A There were a number of people in New York that I spoke to; sometimes with the people changing each day that would be dealing with it. They all worked for Mr. Moran's staff.

Q Incidentally, Mr. Shields, if I could digress for

a moment, how long have you been an Exchange employee?

A Eight and a half years.

Q Did you ever work for the SEC?

A No.

MR. KRAMER: Would you mark this, please.

(Defendant Exhibit F received in evidence.)

MR. KRAMER: Your Honor, I would like to read to you from Defendant's Exhibit F in evidence, which is a copy of a May 11th memorandum of Mr. Shields:

"Subject: SEC conversation, Weis Securities, Inc.

"I spoke with Mr. Ormstem of the New York Regional Office of the SEC. Mr. Ormstem will be handling the Weis Securities, Inc. matter, and all reports to the Commmission should be made to him. I informed Mr. Ormstem that the firm's attorneys" --

I guess that is Weis' attorneys.

THE WITNESS: Yes.

MR. KRAMER: -- "were developing the same allegations as we had and would be coming to the SEC Monday to discuss the situation with Mr. Moran. Mr. Ormstem's main interest was that the SEC be involved in the investigation so as to have a chance to interrogate the same people who we are interrogating and to have an opportunity to review the transcripts of the testimony

that we take. His main point was that if there will be criminal indictments, that we be able to move as quickly as possible."

Q Mr. Shields, I would like to ask you a couple of questions about that memorandum. Is that the first time that you discussed that matter with Mr. Ormstem?

A It may have been the first or second.

Q I take it that this conversation was triggered by the Lynn revelations of the preceding few days?

A I really wouldn't know what triggered it. Mr. Ormstem called me, inquiring into the current situation, and I related the situation to him and stated that there were three or four different people at the SEC whom I was reporting to on a daily basis and asked to have one person assigned as my contact, and he was so assigned.

Q Mr. Ormstem was?

A Right.

Q Did you get the sense -- did he tell you during your May 11th conversation with him that the SEC had independently developed information concerning the Weis bookkeeping problems?

A No; I knew that they were, or I was under the impression they were going to start their own investigation and that they would subpoena records of ours that they wished

to see.

Q In any event, Mr. Ormstem did, as this memorandum indicates, tell you that there was a possibility of criminal indictments eventuating from this investigation?

A Yes.

Q As a matter of fact, that seemed to you to be quite likely, in view of what you had learned from Mr. Lynn?

A The possibility existed.

MR. KRAMER: I take it, Mr. Putzel, that there is no dispute that Mr. Kubie testified before the Exchange on the record --

MR. PUTZEL: May 11, 1973 and May 10, 1973.

MR. KRAMER: May 10th and May 11th. That accords with what my records indicate. And that Mr. Lynn testified before the Exchange, on the record, on May 14, 1973?

MR. PUTZEL: That is correct. And Mr. Solomon on May 17, 1973.

MR. KRAMER: Let me get to that.

Q Did you talk to Mr. Kubie in advance of his testimony on the record at the Exchange on May 10, 1973?

A I had a short conversation with him, since I guess I was the only person who knew him from prior dealings, had a very short conversation but did not stay for the discussions of the problems and the details of them.

Q Who was Mr. Kubie, by the way? I don't believe we have that on the record yet.

A Mr. Kubie was the former controller of Weis Securities.

Q He had been the controller of the firm up until the end of March or beginning --

MR. PUTZEL: April 1st.

Q (Continuing) -- April 1. And your dealings with him prior to this meeting in May were in your capacity as the surveillance officer at the New York Stock Exchange, to whom he reported --

A Yes.

Q -- on the books and records of the firm?

A Correct.

Q Did anybody who was involved in the actual interrogation of Mr. Kubie on May 10th and May 11th report to you then on the substance of his testimony contemporaneously?

A I received reports on a daily basis of the types of allegations or possible additional capital charges that were being uncovered.

Q And it is fair to say, I think, that the testimony which Mr. Kubie gave to the Exchange on May 10th and May 11th again indicated that there were serious and fraudulent bookkeeping violations in Weis' books and records?

A Yes.

MR. PUTZEL: Your Honor, I would like to interpose a general objection to that question and others of its kind. It seems to me we are really wandering pretty far afield in terms of the issues that are really before you here.

There is no issue between us at all about the fact that Kubie and Lynn testified. I would be happy to see their testimony received in evidence in the hearing. The real issue is whether there was an end run between the Exchange and the SEC.

MR. KRAMER: We can take only one step at a time.

THE COURT: I think that what Mr. Kramer is attempting to do is to develop what occurred and to indicate by the circumstances that occurred that there was an implicit end run. I think he is entitled to do that if he can.

MR. PUTZEL: All I am saying is that what Kubie testified to and when is not particularly relevant, it seems to me.

THE COURT: The objection is overruled.

Q (Continuing) Do you remember the question, Mr. Shields, or do you want ot read again?

A Would you read it?

(Record read.)

Q Did you communicate the substance of the charges

which Mr. Kubie was making, the substance of his testimony to somebody at the Exchange?

A Yes.

Q To whom did you speak?

A At the Exchange or the Commission?

Q At the Exchange.

A At the Exchange, to Paul Fitzgerald and Fred Stock.

Q Excuse me. At the Commission now.

A I believe that was one of the -- I forget the individual. I think there may have been a prior memo on that.

Q Mr. Ormstem?

A That was the original allegation that we had received was from Mr. Kubie. The first testimony of allegation was from Mr. Kubie, and that was reported to the Commission.

Q On or about the 10th or 11th of May?

A Yes.

Q Did you again talk to someone at the Exchange and report to that person about the substance of Mr. Lynn's on-the-record testimony at the Exchange on May 14, 1973?

A I am not sure if that specifically was reported or the general contacts of our confirming allegations to the examiners was reported.

Q In this period from May 9th through May 14th, you personally were in daily contact with the New York office of the SEC?

A Yes.

Q And you would talk to Mr. Ormstem and others?

A Yes.

Q Who were the others?

A Mr. Moran, Mr. Morrison, several other individuals who I don't recall the names right now.

Q Did you during this period learn from them what the SEC was doing to check out these serious allegations of wrongdoing on the part of the Weis people?

A At a point in time they were sending two of their own people into the firm to develop their own facts.

Q That was told to you?

A It was told to me that they were going to go in, and my own examiners reported that they were in.

Q Who were these two people?

A I believe -- but I am not sure -- I believe it was Mr. Morrison and Mr. Northrup.

Q What was your understanding? Was it your understanding that these two SEC examiners were also on the accounting end of the examination, if I make myself clear?

A Mr. Morrison had formerly been at the Exchange and

had worked for a time as an Exchange examiner.

Q His background was that of an accountant?

A At least part of his background, yes.

Q Your understanding was that when they were sent in they were sent in by the Commission to the Weis offices to examine the Weis books and records?

A They were reviewing everything that was being found at Weis and looking into things on their own.

Q But the looking consisted of looking at the Weis books and records at the Weis premises?

A I really wouldn't know.

MR. PUTZEL: I object here. This witness is not competent to testify what the SEC people were doing at Weis.

MR. KRAMER: Fair enough. I withdraw the question. I was trying to find out what he was told at the time was going on.

Q Were you also apprised at this time, Mr. Shields, that the SEC was conducting its own interrogation of various people connected with the Weis situation?

A I believe we knew at that time that the SEC intended to begin subpoenaing individuals.

Q You did not know at the time, May 10th, May 11th, May 13th, May 14th, when you were reporting to your SEC contacts, about what the Exchange was learning in its on-the-

record interrogation of Messrs Lynn and Kubie, what the Commission was doing on its end with respect to interrogating those same individuals or others?

A I knew that they were working to bring them in to interrogate them, but I don't believe at that time they had interrogated anyone.

Q There came a time, on May 16th, when a formal subpoena was served by the SEC on the Exchange?

A There --

Q You were apprised of that fact at that time?

A Yes.

MR. KRAMER: Would you mark this, please.

(Defendant Exhibit G received in evidence.)

MR. PUTZEL: No objection.

MR. KRAMER: Your Honor, Defendant's Exhibit G in evidence is a copy of a subpoena duces tecum dated May 16, 1973 from the SEC to the New York Stock Exchange. I would ask the witness if that subpoena was hand delivered to the Exchange on May 16th.

Q Do you recall?

A I am not sure how it was delivered.

Q Do you know, Mr. Shields, whose handwriting that is along the side there on the left hand side of the subpoena?

A I presume it is -- I don't know, but I presume it

is somebody in the secretary's office.

Q That indicates a May 16th receipt date?

A Yes.

MR. PUTZEL: I will stipulate that the initials there are those of J. V. T., Jeffrey, I believe -- J. H. T., Jeffrey -- excuse me -- Jeffrey Tucker, staff attorney with the SEC, and I must infer from the fact that they are by a certain amount of handwriting that the date 5/16/73 refers to the date that the handwritten emendation was made on the subpoena.

MR. KRAMER: I think other evidence will show it was actually served on that day, but I can't get it from this witness.

MR. PUTZEL: I believe that is correct.

MR. KRAMER: Yes; but I can't get it from this witness. If you will stipulate to that effect --

MR. PUTZEL: Subject to anything that contradicts it, yes.

Q Mr. Shields, Mr. Solomon was examined by Mr. Pape at the Exchange on May 17, 1973. Were you told of the substance of what had been developed in the course of his testimony at or about the time it was concluded?

A I was given a synopsis of the testimony, basically one fact concerning the capital of the firm, which was what

I was interested in.

Q Did you in turn report that fact to your contacts at the New York Office of the SEC?

A I don't remember, and I doubt that I would have.

Q To anybody in Washington at the SEC?

A I doubt that I would have.

MR. KRAMER: I have a number of other memoranda, but under our stipulation I don't need to question the witness about them.

MR. PUTZEL: Fine. On your representation that they come from the Exchange, I have no objection.

MR. KRAMER: All right. I have no further questions.

CROSS-EXAMINATION

BY MR. PUTZEL:

Q Mr. Shields, the New York Stock Exchange, as you have testified, was seeking to preserve and if possible revive a failing firm, that is, the Weis Securities firm; isn't that correct, during this period?

A That is correct.

Q It was conducting its investigation for that purpose and that purpose alone; is that correct?

A That was the principal purpose of everything we were doing, was customer safety.

Q Isn't it a fact that the investigation was run by

you and your colleagues for that purpose and that purpose alone?

A Primarily, yes.

Q You have no power of subpoena, do you?

A No; I have -- The Exchange does not, no.

Q The Exchange, rather.

A No.

Q And the only power that the Exchange has is to compel individuals who are members of the Exchange to provide information necessary for it to perform its functions, that is, to make sure that its firms are solvent within the rule; isn't that correct?

A That is correct.

Q That was the context, if you will, in which the Exchange conducted its investigation; isn't that correct?

A That's correct.

Q To your knowledge, did the Securities & Exchange Commission tell you whom to call as witnesses?

A Not at all.

Q You made the determination whom to call and whom not to call, completely independently, did you not?

A Yes.

Q And for the purposes that we just enumerated; isn't that correct?

A That's correct.

Q The documents and testimony that were turned over to the Securities & Exchange Commission, as set forth in the subpoena which is Exhibit G in evidence, were turned over pursuant to an SEC subpoena; isn't that correct?

A That is correct.

Q Do you recall any discussion with any member of the Securities & Exchange Commission, either in Washington or in New York or anywhere, any employee of the SEC, to the following substance: an SEC employee saying, "You can compel these individuals to come in or be thrown out of the securities industry; therefore we want you to summon all of these people, take their testimony and give it to us"?

A Absolutely not.

Q Specifically with respect to Alan Solomon, did you participate in any discussions with any member of the Securities & Exchange Commission in advance of Solomon's appearance to testify at the New York Stock Exchange concerning the fact that he was going to appear before the Exchange?

A No.

Q Do you know of any such conversation by any member of your staff?

A No.

MR. PUTZEL: For the record, I would like to offer in evidence transcripts of the testimony of Joel Kubie, Robert Lynn and Alan C. Solomon, as Government's Exhibits 1, 2 and 3, respectively.

MR. KRAMER: No objection.

THE COURT: Received.

(Government Exhibits 1, 2 and 3 were received in evidence.)

MR. KRAMER: We have copies of these downstairs, your Honor, and I think what I would ask the Court's permission to do is to furnish the Court --

MR. PUTZEL: I take it you have your copies; isn't that correct?

MR. KRAMER: Yes.

MR. PUTZEL: We will furnish the Court with clean copies, since these are copies that we have been marking up.

I have no further questions of this witness.

REDIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Shields, are you a lawyer?

A No.

Q Are you familiar with the rules and regulations and the Constitution of the New York Stock Exchange?

A Yes.

Q And isn't it a fact that an allied member of a member firm of the New York Stock Exchange cannot refuse to appear before one of your examiners to give testimony under oath without facing the penalty of suspension from allied membership in the Exchange?

A That's correct.

Q And that certainly was the case when Mr. Solomon was summoned before the conduct department of the Exchange?

A Yes.

Q And, Mr. Shields, isn't it a fact that the conduct division of the Exchange does conduct investigations which lead to the imposition of discipline upon members and employees of member firms?

A Yes.

Q And isn't it a fact that the context in which this investigation was conducted, commencing with the revelation by Mr. Lynn and Mr. Kubie and their testimony on May 10th and May 14th, indicated wrongdoing which would result in the imposition of these penalties by the Exchange?

MR. PUTZEL: I will object..

THE COURT: Mr. Kramer, don't we know all that? That is why we are here.

MR. KRAMER: No. I am talking about in the context

of the Exchange. Mr. Putzel's point, as I understand it, in his cross-examination of Mr. Shields was that the context of this inquiry by the department of member firms is an attempt to resuscitate Weis Securities, and I say once there was on the table as a result of the Kubie and Lynn testimony allegations of serious wrongdoing, then the whole context of that investigation changed.

THE COURT: All I am saying is that the points that you brought out, that the compulsion to testify or give a statement or else to lose membership is really the reason we are here, isn't it? We know that.

MR. KRAMER: Right. That is one of the points, but I had gathered, your Honor, from Mr. Putzel's testimony --

MR. PUTZEL: What?

THE COURT: Mr. Putzel was bringing out that the nature of the investigation was that it began in an attempt to save the company, but obviously, it seems to me that once they uncovered violations, then, as has been indicated, they seek to enforce whatever is required.

MR. KRAMER: That is the very point, your Honor. At that point it turned into an enforcement proceeding at the exchange.

THE COURT: All I am saying, Mr. Kramer, is this: Isn't that obvious?

MR. KRAMER: And I take it, Mr. Putzel, there is no argument that the Exchange did charge Messrs Kubie, Lynn, Leit, Levine and Solomon in separate charge memoranda and the sanction by the Exchange upon a finding of guilty on those charge memoranda would be expulsion from the Exchange.

MR. PUTZEL: No quarrel as to that.

MR. KRAMER: All right. I have no further questions.

THE COURT: Any further questions, Mr. Putzel?

MR. PUTZEL: Just one moment, if I may, your Honor.

Let me just ask one question, if I may, your Honor.

RECROSS-EXAMINATION

BY MR. PUTZEL:

Q Mr. Shields, putting aside the enforcement ramifications of this, it was the primary objective of the New York Stock Exchange and its investigation, was it not, to save this very large brokerage firm from going out of business and thereby imperiling a substantial amount of money by customers and so on in the marketplace; isn't that right?

A We were primarily interested in customer protection. Whether the firm survived after a merger or not was not of prime concern. It was the customer protection and

making sure that they got out as a whole, was our primary concern.

Q With reference to the Stock Exchange rule concerning the requirement that allied members testify or give evidence when called, is suspension from the securities field, from the Exchange automatic if a person does not testify?

A Not at all.

Q As a matter of fact, that factor is weighed and adjudicated by the enforcement department, just as, for example, testimony by an individual which is an admission of wrongdoing; isn't that correct?

A Yes. What we are interested --

MR. KRAMER: The point is a legal point, and that is that he was subject to suspension. The compulsion to testify comes from --

MR. PUTZEL: I thought I was cross-examining him.

MR. KRAMER: Well, you are arguing law with the witness, it seems to me, not cross-examining.

Q To your knowledge, Mr. Shields, did any employee of the Exchange specifically state to Mr. Solomon prior to his appearance to testify that he was going to be expelled or suspended or in any way disciplined if he did not give testimony?

A Not to my knowledge.

MR. KRAMER: I object to the question on the grounds that no proper foundation has been laid. We don't know that Mr. Shields was there at the time that Mr. Solomon was interrogated.

MR. PUTZEL: If he wasn't there, then he can't have such knowledge.

MR. KRAMER: Well, but you assume that he was.

THE COURT: Were you?

THE WITNESS: No; I wasn't.

MR. PUTZEL: I have no further questions.

THE COURT: Is anyone going to testify to the procedure that is followed by the Exchange in the application of this sanction? Is either of you planning to put on a witness as to that?

MR. PUTZEL: I will be happy to ask questions as to that.

THE COURT: Otherwise, I was going to ask Mr. Shields how it functions. If either of you is planning to introduce evidence in that area, I will not.

MR. PUTZEL: I will be happy to pursue it right now, if the Court wishes, or the Court can do it.

THE COURT: All I want to know, Mr. Shields, is, what is the procedure that follows when an allied member is called to testify and refuses to do so?

THE WITNESS: If an allied member is called and absolutely refuses, in other words, is not looking for just a delay in testifying but absolutely refuses to cooperate with the Exchange, then we would take action which suspends him until he does cooperate, and as soon as he comes in and cooperates, then we address ourselves solely to the issue at hand, whatever that may be, in the individual case.

THE COURT: So that, in other words, for refusal to testify there is an automatic sanction?

THE WITNESS: It can be taken. It is not necessarily taken in all cases, but it can be taken.

THE COURT: What I am trying to find out --

THE WITNESS: If an enforcement --

THE COURT: -- is this: if I am an allied member and I am called for testimony, and I say, "No, I am not going to do so," what I want to know is, what happens?

THE WITNESS: Then we would bring a person up on charges for failure to cooperate.

THE COURT: Up before --

THE WITNESS: A charge memorandum would be written at the time in question -- We have changed our procedures there also recently. It used to be an internal panel would hear charges against an individual. We now have a panel of their peers from the brokerage industry who would hear a

charge, and the normal verdict in a case where a person absolutely refuses to cooperate, rather than just a delay in cooperating, is that they would be suspended until they come back and cooperate with the Exchange.

THE COURT: All right.

THE WITNESS: Normally, to the best of my recollection, this only occurs where a person has left the business and therefore decides not to cooperate with us.

THE COURT: All right.

THE WITNESS: In all other cases eventually they will cooperate, so we do not have to take that action.

THE COURT: One of you stand up at a time.

MR. PUTZEL: That was pure inertia, your Honor.

BY MR. KRAMER:

Q This is a matter which you make known to people who are called to interrogate: that unless they do cooperate and give testimony to the enforcement department, that they will be subject to suspension for failure to testify?

A Not having worked in the individual area of enforcement, I am not sure what they do.

(Defendant Exhibit H received in evidence.)

MR. KRAMER: Defendant's Exhibit H, your Honor, is a memorandum of Mr. Shields which has to do with the then proposed merger between Weis Securities and Ladenburg

Thalmann. I will just read at this point to your Honor the last two paragraphs of that memorandum. It says:

"Arthur Levine, former chairman of the board, and Sol Leit, former president of Weis Securities, will not participate in the management of the new entity."

The new entity was the merged firm of Weis & Thalmann.

"This merger, which has been considered for some time, was hastened due to the discovery of falsification of the books and records of Weis.

"Investigation by the Exchange has led to the removal from office of those persons in management who have been implicated" -- and so on.

I call that to your attention, your Honor, to meet the point that Mr. Putzel has made, that this was merely an investigation which was designed to hasten the merger of these two firms.

MR. PUTZEL: Could I ask by way of voir dire on this document:

VOIR DIRE EXAMINATION

BY MR. PUTZEL:

Q Mr. Shields, do you have a copy of the memorandum in front of you?

A Yes; I do.

Q Was this ever sent to anyone?

A No. This was a draft copy of a release that we were considering making if the merger ever went through. We were thinking of making a release along these lines.

Q So that in fact this memorandum was never more than a talking paper which you were contemplating?

A That's all it was.

Q And the Ladenburg Thalmann merger never took place, did it?

A Never did.

Q And the statement at the end of that, that the investigation has led to the removal from office of those persons in management who had been implicated, was merely a blanket statement by you that you intended to make at the appropriate time if and when such a merger could be effectuated, to assure the public that the individuals who were guilty of the falsification of books were no longer involved in this operation; isn't that right?

A Yes; and it did not refer to Exchange disciplinary action; simply that the investors in the firm had removed from management those who were involved.

MR. PUTZEL: Thank you.

THE COURT: Anything further, Mr. Kramer?

MR. KRAMER: No.

THE COURT: All right, Mr. Shields. Thank you very much.

MR. KRAMER: Excuse me. I do have one or two questions.

BY MR. KRAMER:

Q I call your attention to the memo, which says:

"Investigation by the Exchange has led to the removal from office of those persons in management."

A Yes.

Q So that your investigation --

A Our investigation led to meetings with the management of the firm, with their counsel and representatives of the investors in the firm. Those meetings led to the investors and the counsel for the firm removing from office those individuals who we knew -- the primary people who we knew were involved in the situation.

Q And they had in fact as of this date been removed from office?

A I know that at least two of the main people involved had been removed from office. A new person was put in as the acting chief executive of the firm.

Q The two people who had been removed were Messrs Leit and Levine?

A Yes.

MR. KRAMER: No further questions.

THE COURT: Thank you. You are excused.

(Witness excused.)

THE COURT: I normally take a break at three-thirty, but since we will take one for ten minutes and then resume, we will take our break now.

(Recess.)

D E N N I S M I C H A E L P A P E , called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Pape, you are an attorney in the employ of the New York Stock Exchange?

A That's correct.

Q What is your title and what do you do?

A I am special counsel and manager in the department of enforcement. Did you also ask me what I did?

Q Yes.

A In certain instances I investigate allegations of violation of the Exchange constitution and rules, violations of the securities and Federal securities laws as well as other possible bad business practices by people under the jurisdiction of the New York Stock Exchange, as well as

supervise a staff that works for me within the department doing the same thing in other cases.

Q Were you performing substantially the same duties in May of 1973?

A That is correct.

Q To whom did you report?

A I reported to a director of the conduct division, which was Mr. Ron Levine.

Q What was your relationship to Stuart Nelson?

A Stuart Nelson was assistant vice president, and one of the departments under his control was the conduct division. Mr. Levine reported to him, and I reported to Mr. Levine.

Q Am I correct in my assumption that in May of 1973 you were assigned the job to head up the investigation of the alleged wrongdoing at Weis Securities?

A That is correct.

Q And you did that in conjunction with what other members of the Exchange staff?

A I had a senior investigator working for me by the name of Stuart Fields at the time. I supervised him. He was to assist me in the investigation.

Q Mr. Pape, would you tell us briefly what your history at the Exchange has been. How long have you been employed by the Exchange, and where were you before that?

A How far back do you wish me to go?

Q Well, take it from your law school days.

A All right. I was an investigator for the City of New York, investigating legal claims, from 1964 through January of 1968. While I was working for the City, I was going nights to Fordham Law School, graduated in June of 1967.

From then I became a trial attorney in the criminal branch of the Legal Aid Society, practiced with the Legal Aid Society in both criminal court and Supreme Court, criminal matters. From there I went to the Securities & Exchange Commission as trial attorney in the New York Regional Office in July of 1970. I worked there until May of 1972, when I was -- I became associated with the New York Stock Exchange as a special counsel and added the management status in October, I believe, of 1972.

Q So you came directly to the Exchange from the New York Regional Office across the street of the SEC?

A That is correct.

Q What department were you in over there? What were your duties at the SEC?

A I was in the enforcement division, and my duties there were essentially the same: investigating and prosecuting violations of the Federal securities law.

Q To whom did you report at the SEC?

A Originally, I directly reported to a gentleman by the name of Gerald Gordon, who was my branch chief, and after that, when he left the Exchange, I reported to -- I have drawn a blank. I cannot think of his last name. Martin Schwartz, I think it is.

Q Martin --

A Martin Siegal. I am sorry.

Q Did you do any work with, while you were at the Commission, the various staff members who were later assigned to investigate the Weis Securities matters?

A I don't know if I know everybody who investigated the Weis Securities matter for the Commission, so if you tell me their names, I will tell you if I worked for them.

Q I don't know, either, but we are going to find out during the course of this hearing. But let me name some of them that I do know. Barry Mandel.

A I don't think Mr. Mandel even worked with the Commission wnen I was there.

Q William Nortman?

A I knew but never worked for Mr. Nortman. N-o-r-t-m-a-n, I guess.

Q What is the name of this other fellow?

MR. PUTZEL: Jeffrey Morrison.

Q (Continuing) Jeffrey Morrison.

A Mr. Morrison was not with the Commission when I was there.

Q Frank Ormstem?

A I knew but did not work for or with Mr. Ormstem.

Q But you knew these: Messrs Ormstem, Nortman and Tucker at the Exchange?

A You did not ask me about Tucker. Yes; I knew Mr. Tucker, but I also did not work with him. But I did know them. Yes; I did.

Q Mr. Pape, how did you first get involved in the Weis Securities investigation?

A Approximately the second week of May, I was called into Stuart Nelson's office. He explained to me that there appeared to be some sort of problem with the firm: their books might not be accurate, and there might be some problems with the capital structure of the firm, and I was to investigate.

MR. KRAMER: Would you mark this, please.

(Defendant Exhibit I marked for identification.)

MR. KRAMER: I am not offering it in evidence at this time, because I don't know what it is, but I am going to ask this witness if he recognizes the handwriting on those sheets before him.

THE WITNESS: I think I do.

Q That is a bad xerox copy of some --

A If I may, except for one page, I believe I recognize the handwriting. As to one page, I am not sure whose handwriting it is.

Q And the rest of the handwriting on the numbered pages is Mr. Nelson's handwriting?

A No, sir.

Q Whose is it?

A I believe it is the handwriting of Stuart Fields. And just for the record, if I may add, I think it is the fifth page that I do not know the handwriting.

Q That memorandum bears the date 5/9 in the upper right hand corner, and it appears to be Mr. Shield's notes concerning an interview of Bob Lynn, at which Messrs Womack, Hobby, Pape and you were present?

A I believe you are incorrect.

Q All right. Tell me how I am incorrect.

A Mr. Lynn was not talked to by myself or Mr. Fields prior to, I believe, May 14th if the date May 9th is the applicable day.

Second of all, when we did talk to Mr. Lynn, I do not believe Mr. Hobby was ever present. I do not think this is at all, from looking at it, notes at all of any interroga-

tion or meeting with any witness. I think I know what it is, if you wish me to speculate.

Q Why don't you speculate.

A I think myself and Mr. Fields met with the two examiners to just get the name of the assistant controller and find out some facts about the firm and what the examiners had found, and I think he made some notes about it, but I am speculating. I have no idea what these are, other than a guess.

Q With reference to the time that you interrogated Mr. Lynn on the record, when is the first time that you had talked to him?

A Mr. Lynn?

Q Mr. Lynn.

A I believe he came in to have his testimony taken, was the first time I ever talked to him.

Q Did anyone on the Exchange staff tell you of a prior interview with Mr. Lynn?

A Yes. Mr. Womack.

Q And when did that occur?

A I will state that Mr. Womack told me that he had talked to Mr. Lynn. It wasn't an interview. Mr. Womack had been in the firm at the Exchange's direction, trying to ascertain the condition of the books. Mr. Lynn, I believe,

was the controller at the time, and he indicated that during the period of time he was in there he had talked to Mr. Lynn.

I also, prior to Mr. Lynn coming in, asked Mr. Womack to have Mr. Lynn meet myself and Mr. Fields, and he did convey that particular message to Mr. Lynn.

Those are the only contacts that I know of by our staff -- there might have been contact by other examiners who were at the firm that I know nothing of -- but that is the only contacts that I know of prior to the time he came in to testify.

Q Which was on May 14th?

A That is correct. I believe so. It was the Monday following.

Q Following what?

A Following the week I became involved in the case.

Q You also had interrogated Mr. Kubie --

A Yes.

Q -- according to the transcripts which are in evidence on this hearing, commencing on May 10th?

A That is correct.

Q Was your on-the-record interrogation of Mr. Kubie on May 10th the first time that you had discussed the Weis Securities situation with him?

A I had called Mr. Kubie the night before and asked

to come in. That was the only time I ever talked to him until he walked in the next day for interrogation.

Q How did you come to make this contact with Mr. Kubie?

A Are you asking me the circumstances as to why I called him in?

Q Yes; why you called him.

A Because it was my understanding that he was the man, the controller of the firm, before Mr. Lynn; that our examiners had found possible transactions and entries on the books that were under his particular control at the time he was with the firm that were in question; and I decided that he would be the logical place to start my investigation.

Q So as far as you knew, no one on the Exchange staff had interrogated Mr. Kubie prior to May 10th?

A I think Mr. Kubie was already off premises when our examiners went in. If Mr. Kubie had been involved in something in the past or somebody may have talked to him, I don't know about it. However, I believe he was already off premises before our examiners went to the firm, and I think I was the first one to make any contact involving the matters that I believe are before this Court.

Q Mr. Pape, how long had you been at the Exchange at this point?

A Approximately one year. In fact, it was just a year.

Q You had come on board in May of '71?

A '72.

Q Excuse me. Had Mr. Kubie been interrogated at this point by anybody at the Commission?

A As far as I know, he was not. It was not indicated that he was, and I have no independent knowledge that he was.

Q You said that your reason for contacting Mr. Kubie was because your examiners, that is, the Exchange examiners, who were on the premises of Weis Securities, reported some concern about wrong entries in the books; is that correct?

A That is what they told me, yes. There were incorrect entries.

Q Was there any suspicion at that point that the entries had been fraudulently made?

A I don't know how the examiners -- I don't remember how the examiners characterized them. I know I personally did characterize them when I knew what they were.

Q Prior to the time you interrogated Mr. Kubie?

A That is correct.

Q And certainly as a basis of Mr. Kubie's answers to your questions on the record on May 10th and May 11th, there

was no longer any question in your mind that fraudulent entries had been made in the books and records of Weis Securities?

A First of all, I don't think I participated in the May 11th interrogation, except possibly walking in and out a number of times. I was working on something else that day. I had a suspicion from the nature of the entries that they were improper, just from the nature of what the entries were. Mr. Kubie, from his testimony, which at the moment I am not that conversant in any more, did lead me to believe that my suspicion was correct and that there was a problem at the firm.

Q It was more than a problem of negligence?

A More than a problem.

Q And there were criminal activities of which you were apprised when Mr. Kubie first came before you, on May 10th?

A I don't think I made the legal judgment whether they were criminal or -- Well, let's put it this way -- criminal. I did not think we were dealing in negligence.

Q You had a strong suspicion, confirmed by Mr. Kubie's testimony, that somebody had been fraudulently and criminally fooling around with the books of Weis Securities?

A I will use the last two words. I did not

characterize them as fraudulently and criminally. I did not make the legal judgment. I just said this is something that is wrong, and let's find out exactly what it is.

Q But at the conclusion of Mr. Kubie's testimony on May 10th, your suspicions had been confirmed to a large extent, had they not?

A Yes; they had.

Q Did you report back to anybody that day or the next day at the Exchange?

A That night, the night of the testimony of the 10th, I did.

Q To whom?

A I believe to Mr. Nelson, and I might have written a memo or had Mr. Fields write a memo to one of my superiors

I have a vague recollection of that, but I am not positive at this time whether or not it was done.

Q Did you personally at that time or in the days immediately following your first interrogation of Mr. Kubie speak to anybody at the New York Regional Office of the Commission?

A Would you please define what days immediately following? How far do you want to go?

Q When for the first time were you in contact with anybody at the New York Regional Office on this matter?

A Probably not until the following Tuesday, which I gather would be the 15th. I might have had contact with somebody -- I know I did not have any before that.

Q How do you fix the date May 15th as your first contact with anyone at the Commission?

A Because as far as I knew, no one at the Commission knew about the nature of the problem until Monday, the 14th, and I personally had no contact with them until an event that took place on the 14th.

Q What was that event?

A To my understanding, the outside counsel to Weis Securities had found out from Mr. Lynn what had been going on or alleged to have gone on and went and told Bill Moran, the acting Regional Administrator of the SEC, as to what Mr. Lynn had told him, and that was on the 14th.

Q Who told you that?

A I think I was present at a conversation on the speaker phone on either -- I believe it was on Friday previous, which I gather was the 11th, where Mr. Gould said he was going -- in Mr. Nelson's office this conversation took place -- and I believe I was later told, but I don't remember by whom, that the conversation actually did take place and that Mr. Gould did appear at the office that day and talked to Mr. Moran; but I don't remember when I found out or from

whom.

Q Mr. Gould is Mr. Milton Gould?

A That is correct.

Q And he is the lawyer for Weis Securities that you mentioned earlier?

A That is correct. It was my understanding he was outside counsel to the firm.

Q So you were present in Mr. Nelson's office on Friday, May 11th. There was a speakerphone conversation with Milton Gould on the other end of the phone, and Mr. Gould said he was going to go to Mr. Moran at the SEC and tell him about these revelations that Mr. Lynn had made concerning the false record keeping at Weis?

A That is correct.

Q And then, on the following Monday or Tuesday, you spoke, yourself, for the first time to anybody at the SEC?

A I said I believe it was that day. That is the first possible day I could have had contact with him.

Q That day was what: May 11th?

A No. That would have been the 15th, Tuesday. It might have been Wednesday, the following day, the 16th. I was very busy on Monday, and I am pretty sure I did not have time to make calls to the SEC that day or receive any calls from them.

My first contact with the SEC was either the 15th -- It couldn't have been earlier than the 15th. It might have been the 16th.

Q To whom did you speak?

A I know I talked to Jeffrey Morrison, because he hand-delivered a subpoena for some of the transcripts that had been taken. I believe I talked to Franklin Ormstem, who told me that the subpoena was coming and to ask me if there were transcripts, I believe, to whether or not he should subpoena them.

I think when Mr. Morrison came up, Mr. Mandel was with him, and Mr. Tucker was with him, and I talked to both of them also.

Q On the --

A No; this was in person.

Q This was in person?

A That's correct.

Q Mr. Mandel, Mr. Tucker and Mr. Morrison all called on you at your office at the Exchange on May 15th or --

A 16th.

Q On May 16th, and delivered a subpoena to you personally?

A They delivered a copy to me. I am not a proper agent or officer of the Commission, and they had to serve the

original, I believe, on the secretary of the Exchange, and they served a copy on me, because I was the one who had the documents.

Q Did you immediately turn over the documents to them when you got the subpoena?

A I believe I did.

Q And that was reflected in this memorandum of yours dated May 16, 1973 --

MR. KRAMER: -- which I offer in evidence.

MR. PUTZEL: No objection.

(Defendant Exhibit J received in evidence.)

A This is a memorandum I prepared for Mr. Stock, and it does refer to the subpoena that was served on May 16th, and that is a photostat of my signature.

Q And that confirms and memorializes the fact that on that date you turned over to the Securities & Exchange Commission the three transcripts of testimony already taken?

A That's correct.

Q And that was the testimony that you had either taken or had participated in taking of Messrs Kubie on May 10th and May 11th and Lynn on May 14th?

A That is correct.

Q And I take it that you also turned over to those gentlemen at that time all of the documentary evidence that

had been marked during the taking of that testimony?

A I believe we did, yes.

Q Did you have any conversation with these three callers from the SEC on May 16th?

A I believe I did.

Q Will you tell us, to the best of your recollection, what was said by you and by the three individuals from the SEC?

A I don't believe we discussed the case at all. I think I just indicated who the people were who had been taken, their positions at the firm, and possibly identified some of the documents as to what they were. The rest of the conversation was strictly --

Q Social?

A Social and personal, yes. I do remember now, however, a conversation I did have on the 15th.

Q All right. I was going to come back to that one. Will you tell me about the conversation on the 15th?

A I don't remember who at the SEC called or who I talked to. I think it was Mr. Ormstem. Had asked for the transcripts, and I told him he could not have them without a subpoena.

Q Did Mr. Ormstem indicate to you during that conversation that the SEC was engaged in a formal investigation into

the Weis Securities matter?

A "Formal investigation" is a word of art. If you mean it as a word of art, meaning they had a formal order of investigation -- I think I asked them if they did, and I think on that day he did not, and I think I was shocked that on the 16th he did.

Q What was the conversation between you and Mr. Ormstem?

A I told him that -- I think he asked me if we had taken interrogations. I explained to him that we had. He asked for copies, and I told him that I could not turn them over without a subpoena.

Q Did he tell you what information the SEC had received concerning the Weis affair?

A No; he did not.

Q How long did the conversation last?

A Other than social talk, no longer than maybe a minute or two on the case.

Q Was there any talk at that time or in your conversation with Mr. Ormstem about possible criminal investigation?

A My investigation --

Q No. Just the conversation.

A No.

Q How about on the 16th of May, when the three

gentlemen from the SEC came bearing the subpoena?

A I don't think there was ever any conversation up and through some time in July or August that there was any -- No. Excuse me. I withdraw that. Somewhere around June 1st I think the word "criminal" or "criminal allegations" was even thought of or mentioned.

Q Let us restrict ourselves to "mentioned".

A No; it was not, up until at least June 1st.

Q You heard no mention made of it?

A That is correct.

Q Based on your experience as an investigator and prosecutor of such matters at the SEC, you had no doubt in your own mind at the conclusion of the taking of Mr. Lynn's testimony on May 14th that there were possible criminal violations involved in this matter?

MR. PUTZEL: Objection.

THE COURT: Objection sustained.

Q When for the first time did you think to call Alan Solomon before the Exchange in connection with your investigation?

A When did I think about him? As soon as Mr. Kubie testified, in my mind I had a list of witnesses. When did we fix up the date? It was probably after Mr. Lynn testified that it got to the point where I wanted to pin

down the date that Mr. Solomon would be coming in.

Q How did you go about summoning him before you?

A I do not recall the exact circumstances. I either asked Mr. Womack to tell him when he was at the firm to come in or I had Mr. Fields call him. I am not sure which it was.

Q Did you talk to Mr. Solomon or to his attorney prior to the time that he came to be interrogated, which we know was on May 17th?

A I think his attorney called prior to him coming in.

Q In any event, on the 16th of May, when the three gentlemen from the SEC hand-delivered the subpoena to you, you had already fixed the time of Mr. Solomon's testimony?

A I can't be sure, but I doubt that.

Q You said you made the arrangements on the 15th, I thought.

A I said I fixed in my mind approximately on the 15th that I wanted him. Whether or not I had him scheduled yet on the 15th I don't know. I know by the end of the day on the 16th I did. Whether it was Mr. Womack or Mr. Fields working with our interrogation schedule to figure out a time that he could come in, until the end of the day on the 16th, I am not sure whether or not I knew exactly when he was coming in, the time and the day.

Q You don't recall at this time whether you knew the day before Mr. Solomon actually testified that he was going to testify; is that what you want to tell us?

A Referring to my own memorandum, which has been marked as Exchange J, which is dated the 16th, my own words are: "The following interrogations have been finally firmed up with counsel with the following witnesses", and the first name is Alan Solomon will appear on May 17th . This is the same memorandum that indicates that the SEC was present and has brought over the subpoena.

So to my mind, because I was being asked by my superiors who is coming and when, and because I sent the memorandum on the 16th, it appears to me from my recollection that I would not have dictated this memo in those terms if I had known prior to the 16th that Mr. Solomon was coming in on the 17th.

Q Whether you knew finally and precisely the time he was coming in, you had made or initiated the process to compel him to come in to testify, and you knew that you would be interrogating him at the time the fellows from the SEC called upon you?

A I don't think I indicated any process to compel him --

Q No, Mr. Pape --

MR. PUTZEL: I ask that the question be answered.

MR. KRAMER: That is what I want him to do: answer the question and stop speculating.

MR. PUTZEL: Mr. Kramer did not give him a chance.

MR. KRAMER: Well, he is starting to tell me what is going on in his mind.

Q Don't fence with me, Mr. Pape. It is a very simple question.

A Then I have to answer your question "No".

MR. KRAMER: Would you read the question.

(Question read.)

A My answer to that question is "No".

Q You had not initiated the process of contacting Mr. Solomon prior to May 16th?

A Contacting? Yes.

Q You had?

A That's correct.

Q Then you did intend prior to May 16th to call him to testify before the Exchange?

A Absolutely.

Q Did you tell the Exchange people that fact when you met with them on the 16th -- the Commission people, excuse me .

A I do not recall whether I told them about trying to get Mr. Solomon in.

Q When Mr. Solomon appeared to testify before the Exchange on May 17th, you administered to him the usual warning language about the necessity of his cooperating with your investigation under the rules and regulations and constitution of the Exchange.

A I do not recall any such warning.

Q Does that refresh your recollection?

A No, sir. I see no warning as to cooperation or compelling cooperation with the Exchange.

MR. PUTZEL: It is in evidence and it speaks for itself; isn't that correct?

MR. KRAMER: All right, I won't argue with you about the meaning of that statement.

Q Mr. Pape , did you tell Mr. Solomon that there was a coordinate investigation in progress by the SEC?

A I am not sure I understand the definition of that

If that means a joint investigation, no. If that means did I tell him whether or not the SEC was looking into the matter at the same time, I believe that may have been told to his attorney and himself prior to going on the record.

Q You have no independent recollection of that at this time?

A Not a positive recollection, no.

Q Did you talk to anyone at the SEC after you had finished taking Mr. Solomon's testimony on May 17th?

A That day, no.

Q The next day?

A No.

Q The day after that?

A I was on my way to Spain. I had no contact with anybody involving either the SEC or the New York Stock Exchange other than the people on the trip with me until the following week. So the entire week from the 19th through, I believe, the 27th, I was out of the country.

Q Do youknow from discussions at the exchange whether any of your associates there reported to anyone at the Commission about Solomon's testimony before the Exchange?

A I don't believe so. I don't recall any such conversation.

Q Correspondence in the files of the Exchange indicate that the transcript of Mr. Solomon's deposition was complete and mailed to his then attorney on May 21, 1973, with a letter of transmittal signed by Mr. Fields and that on May 23, 1973, Mr. Solomon's then attorney, Alan Hoffman, returned the transcript to Mr. Fields. It was received back at the Exchange no earlier than May 24th, since it went by regular mail.

A If that is a question, the --

Q No.

Did you see the completed transcript when it got back to the Exchange?

A I believe I did.

Q And then what did you do?

THE COURT: I can't hear you.

THE WITNESS: I said I believe I did. I am sorry.

Q Were you back in the office at that time, May 24th, May 25th?

A No, I wasn't.

Q Do your records indicate what became of the transcript when it was returned to your office?

A I have no records that would indicate what happened, other than I was aware when I first knew about the transcript when it was returned that it was being

maintained by Mr. Fields in his file.

Q Do you know from any of your records whether a copy of the transcript was transmitted to the Commission?

A I know it was transmitted to the Commission. I have no record to that effect.

MR. KRAMER: Mr. Putzel, what do the government records show on that subject?

MR. PUTZEL: The question can be put, since I think Mr. Pape was the one who delivered it. When did you deliver the transcript, Mr. Pape?

THE WITNESS: I believe it was June 1st.

MR. PUTZEL: That is consonant with my understanding. 1973. That was pursuant to subpoena, I think.

THE WITNESS: It was my understanding and I was instructed, I believe, that May 16th was a continuing subpoena for all transcripts as they were completed.

Q Did you hand deliver the transcript?

A Yes, I did.

Q To whom?

A I went up to the Securities and Exchange Commission, New York office, went to the office of William Nortman, and I delivered the transcript to him. There were other gentlemen with him at that time.

Q Have you any knowledge of whether anyone on the staff of the SEC or the U.S. Attorney's office here had been apprised of the substance of Mr. Solomon's testimony at the Exchange prior to June 1st?

A I do not recall any such contact.

Q You have no knowledge --

A That is correct.

Q -- of that? Do you know whether Mr. Morrison had sent a copy of Mr. Solomon's testimony prior to June 1st?

MR. PUTZEL: Objection. Mr. Morrison is going to be a witness.

MR. KRAMER: All right.

I offer this memorandum.

(Defendant's Exhibit K was received in evidence.)

MR. KRAMER: Defendant's Exhibit K is a memorandum dated May 14, 1973, from Mr. Pape to his superior at the Exchange, Myron levine, and it deals with the testimony given on the record by Mr. Lynn on May 14th.

That is just for the Court's benefit.

Q Mr. Pape, did you deliver a copy of this exhibit, your memorandum, to anyone at the Exchange prior to May 16th?

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A To the best of my recollection, no.

MR. KRAMER: I have no further questions.

CROSS EXAMINATION

BY MR. PUTZEL:

Q Did you deliver a copy of this memorandum to anyone at the Commission ever?

A In my normal course of business I would never let a memorandum like this out.

Q Well, do you have any recollection of delivering that memorandum to anyone?

A No, sir.

Q Mr. Pape, prior to the time Alan Solomon was contacted by you, did you have any conversation with any member of the Securities and Exchange Commission in which they directed you to call Alan Solomon as a witness?

A No, sir.

Q Did any member of the Securities and Exchange Commission, any employee, request you, instruct you, or in any way advise you to call any witness -

A No, sir.

Q -- before the New York Stock Exchange?

A No, sir.

Q Who made the decisions to call witnesses before the New York Stock Exchange?

A I did.

Q And you made those decisions, did you not, on the basis of information that was becoming available to you through the examiners at the Weis offices, isn't that correct?

A Only the first witness.

Q That would be Mr. Lynn?

A No, Mr. Kubie.

Q Once you had heard what Mr. Kubie had to say, you proceeded to track down the leads suggested by his testimony, isn't that correct?

A That is correct.

Q All of that process was an investigative process that you pursued on your own without any consultation or without any agreement or duress by the Securities and Exchange Commission, isn't that so?

A Absolutely.

Q When Mr. Solomon appears on the 17th of May, 1973, he was accompanied by an attorney, was he not?

A That is correct.

Q That is a man by the name of Mr. Hoffman?

A I believe it was Allan M. Hoffman, as the record reflects. Isn't that correct?

A I believe so, yes.

Q Didyou in any way threaten Mr. Solomon that if he did not testify he would be subjected to sanctions of the New York Stock Exchange?

A I do not believe so.

MR. KRAMER: The record speaks for itself.

Q I take it, Mr. Pape, that you had some conversation with both the attorney and with the witness, Mr. Solomon, prior to the time that youwent on the record, isn't that right?

A That is correct.

Q And in fact during the lengthy testimony Mr. Solomon-- you went off the record several times, isn't that right?

A That is correct.

Q Did you at any time threaten Mr. Solomon that if he did not give testimony that you would subject him to sanctions of the New York Stock Exchange?

MR. KRAMER: The compulsion here comes not from what this witness may have told Mr. Solomon --

THE COURT: Mr. Kramer, I understand.

MR. KRAMER: -- but the existence of the constitutional provision.

THE COURT: I understand.

Proceed.

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A I do not believe I threatened Mr. Solomon with any sanctions for failing to testify.

THE COURT: As it has been pointed out, he doesn't have to, does he? That seems to me to be immaterial. If the regulation is such, it is there. If there was any compulsion it was by virtue of it. He knew or I presume he would know what the constitution required. Mr. Pape didn't have to advise him of that in order for it to go into operation. I think it is a waste of time.

MR. PUTZEL: Well, it is a waste of time arguing.

Q Mr. Pape , when Mr. Solomon began to talk, did he talk hesitatingly or with reservation about the matters that you questioned him about?

MR. KRAMER: I object.

THE COURT: I don't understand what the purpose of that is. What is the purpose of the question?

MR. PUTZEL: The purpose of the question, your Honor, is to elicit that far from being --

THE COURT: I understand, all right. The objection is overruled. You can ask him.

A Could you please define your terms? I am having trouble with it myself.

Q I will withdraw the question and rephrase it.

Was Mr. Solomon responsive to your questions?

A Yes, he was.

Q When he provided information, did he do so freely and without any apparent reservations that you could determine as you questioned him?

MR. KRAMER: Your Honor, I must object.

THE COURT: I think that objection is sustained. You are asking him to read Mr. Solomon's mind and I don't think he can do that.

MR. PUTZEL: I have no further questions of this witness.

THE COURT: Anything further, Mr. Kramer?

MR. KRAMER: No.

THE COURT: Thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: What is the relationship between you, Mr. Pape, and Mr. Shields? That is just out of curiosity. Is he in the same --

THE WITNESS: At that time we were called the Department of Member Firms. It was everybody in the building where we were working was under that department. Mr. Shields was under a different vice president and a different assistant vice president. He was in a different

division, the Coordinator's Division.

THE COURT: All right.

There was a question that at one point Mr. Pape and Mr. Shields had done something, and I wanted to get that straight. He didn't work for you?

A No, sir.

BY MR. KRAMER:

Q Mr. Pape, I understood you to say under direct examination by me initially that your function in conducting examinations was to determine whether there were violations of the Exchange rules or the SEC rules and regulations. That was what your primary function at the Exchange was.

A That is correct.

Q When you were at the SEC and you developed any working relationship with Exchange personnel who conducted investigations similar to the ones that you conducted in the Weis situation?

A I came to know two individuals at the New York Stock Exchange, yes.

Q And isn't it a fact that there is a relatively free flow of information back and forth between the New York Regional Office of the SEC and the Department of Member Firms investigative staff?

A No, sir.

MR. KRAMER: No further questions.

(Witness excused.)

MR. KRAMER: Mr. Womack.

A U B R E Y W O M A C K, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KRAMER:

Q You are a staff examiner employed by the New York Stock Exchange, Mr. Womack?

A Yes.

Q What is your title?

A I am presently a director within the department. I am not technically a staff examiner at this point.

Q What was your job title in May of 1973?

A I was a principal examiner.

Q You were the head examiner on the Weis Securities matter in April and May of 1973?

A That is correct.

Q What were your assigned duties in connection with that examination?

A To determine the financial status of the firm and to confirm the firm was in capital compliance with the capital rule of the Exchange.

Q You are an accountant by training, I take it?

A Yes, that is correct.

Q How long had you been a Stock Exchange employee?

A At that time?

Q Yes.

A Approximately 12 years.

Q When did your duties in connection with the Weis examination commence?

A April 13, 1973.

Q And from April 13, 1973 until the firm went out of business, I guess on May 23rd, at the conclusion of business on May 23rd, were you spending a good deal of your time on the Weis premises?

A Yes. Initially not a great deal of time, but within, say, a week or two weeks after that date I was spending most of my time there.

Q So that toward the end of April, throughout the month of May, you were spending a great deal of your time at the Weis offices?

A That is correct.

Q At, what is it, 17 Battery Place North? Is that the location?

A That is correct, yes.

Q And there were other examiners on your staff who participated in that ongoing audit of the Weis books and

records.

A Yes.

Q There came a time during that period when the New York office of the SEC became involved in that investigation as well. Is that correct?

A That is correct.

Q When did that occur for the first time?

A For the first time to my direct knowledge I believe it was subsequent to testimony that had been taken at the Exchange, which I believe occurred on May 10th, and I believe it was the following week that they appeared at the premises of Weis.

Q So that would be around May 16th, May 15th?

A Yes.

Q May 10th was a Thursday. And was it at the beginning of the following week?

A I believe it was the latter part of the following week.

Q Did you meet and discuss the problems that you had discovered up to that point with the SEC people when they came on the Weis premises?

A Yes, I did.

Q Who were the SEC examiners on the case?

A Well, Mr. Jeffrey Morrison, a Mr. Tucker,

another gentleman that I just met again. At the moment his name escapes me.

MR. PUTZEL: Can I help here? Did you just meet him today?

THE WITNESS: Yes.

MR. PUTZEL: Would that be Mr. Mandel?

THE WITNESS: Mr. Mandel.

Q Was that the first time you have met these gentlemen?

A I had met and worked with Mr. Morrison when he was with the Exchange.

Q But on this particular matter, in the Weis matter.

A To my best recollection, yes.

Q So that your guess is that that was some time during the week of May 15th?

A Yes.

Q And that was at the Weis premises?

A Yes.

Q How long did your initial meeting with these gentlemen last?

A I would say an hour and a half, possibly two hours.

Q Can you tell the Court what the substance of the

meeting between you was?

A It was basically to brief them on a reason for being at Weis, conducting the examination, to update them with respect to their findings relative to the examination to that date, and to quite frankly disclose to them all that we knew about the affairs to that date.

Q And I take it that as of the date of that initial meeting, you were aware of substantial discrepancies in the books and records of Weis Securities?

A Yes.

Q And as a matter of fact you identified a number of entries which you had determined in your onw mind were fraudulent?

A Yes.

Q And had testimony to that effect by Messrs. Lynn and Kubie?

A Yes.

Q Did you tell these gentlemen about the completely fictitious entry at the beginning of February, a million and five hundred thousand dollar credit against the bank loan account?

A Yes.

Q And of the $2 million similar credit at the end of the month of February, 1973?

MR. PUTZEL: March.

Q In March, yes.

A That is correct. Yes.

Q Did you show them the various bookkeeping records which indicated those particular fraudulent entries?

A Yes. Well, not the entries themselves, but the records which we had obtained to indicate that the entries had been put through and shown on the books and records.

Q How many times thereafter did you meet with the SEC examiners to review your findings?

A To review our findings specifically? To the best of my knowledge I don't think such meeting was held.

Q Did you turn over to these gentlemen your work papers on the examination?

A No, I did not.

Q Were you aware that they were turned over?

A Yes.

Q At what time?

THE COURT: At what time was he aware?

MR. KRAMER: No. When.

Q When did that occur?

A Well, what do you mean by work papers? Which work papers?

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Q The work product of your investigation. I am trying to determine what information your staff, your accounting staff, working under you, made available to the SEC and when.

A I would say within a week after their first appearance, I received information that the various transcripts had been made available and that a schedule or possibly various schedules which indicated on a pro-forma basis what we believed the capital position to be on that particular date were made available to the SEC. Other than these types of isolated records, I was not aware -- or I did not participate in submitting anything to the SEC. There has been obviously recent, very recently, various documents submitted, subject to subpoena of course.

THE COURT: Mr. Kramer, I am going to accommodate Mr. Putzel. We will suspend now.

Before we do do -- you may step down.

(Witness temporarily excused.)

MR. KRAMER: Mr. Womack, I will see you back there at that post tomorrow morning -- at what time, your Honor?

THE COURT: 10 o'clock.

MR. KRAMER: 10 o'clock.

THE COURT: You gentlemen want this hearing

spaced so there will be a decision on the matter. I think in order for me to accommodate you I am going to have your cooperation, which means an early filing of whatever brief you want.

And also the arrangements that I can get the transcript so that I will be able to review it.

MR. PUTZEL: We will order that on a daily basis, your Honor.

I understood that the submission that the Court wished was really to focus on the ramifications of a decision granting the motion to suppress, in other words what effect would that have on the trial itself.

THE COURT: I take it that your position, if I understood it, is that even if I were to hold that Mr. Solomon's statement is going to be suppressed, that your theory is that you have independent evidence and can proceed with the trial in any event. That is what I understood your theory to be.

MR. PUTZEL: Yes.

THE COURT: Mr. Kramer takes the view that if I find that Mr. Solomon's statement is tainted, that all of the evidentiary proof that you might have is tainted and therefore the indictment has to be dismissed.

Since that will be the ultimate position of the

two of you, it also seems to me that both of you have to meet the question as to whether this evidence that is introduced here warrants a suppression in the first place. If your briefs are going to deal with that, that is what I want.

MR. KRAMER: Your Honor, we will be prepared as soon as this hearing is over. I will need maybe a day or a day and a half to summarize the evidence.

THE COURT: We will complete it tomorrow, I believe, and I should have briefs submitted Monday.

MR. PUTZEL: Could we have the following schedule, your Honor: If we could have no more than fifteen minutes each, at the most, for oral argument, I think we might be able to sharpen the issues here very substantially.

THE COURT: All right.

(An adjournment was taken.)

qp1 90

UNITED STATES OF AMERICA
vs. 73 Cr. 693
ALAN C. SOLOMON.

New York, June 14, 1974;
10.00 A.M.

Hearing resumed.

- -

MR. PUTZELL: The government is ready.

MR. KRAMER: Ready.

A U B R E Y W O M A C K, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. KRAMER:

Q Mr. Womack, will you tell the Court in a general way what the function of a New York Exchange Examiner is? What is his principal duty?

A His duty is generally to review books and records, review operations of member firms of the Exchange, to determine that the member organization is in compliance with the rules of the Exchange as well as SEC rules and that it's in operationally good condition.

Q Approximately how many people are employed by the Exchange as Examiners including supervisory and working personnel? How many people are in that department?

qp2 Womack-direct

A Approximately 75.

Q And that was true in April and May of 1973?

A No, that includes approximately 11 supervisory standards personnel which are engaged in the same activity but at that time were outside of that department. I would say at that time it was approximately 65.

Q 65 and then these other people who were not in the same Examiner's department but were performing the same sort of functions in someone else's department in the Exchange?

A Not the same function. Their primary concern was review and surveillance of member organization branch offices and supervision of employees and representatives and conduct of their activities rather than concerning themselves with financial records or operational records generally as the Examiners do.

Q One of the duties of this staff of Examiners, as I understand it, is to make sure that all member firms are in capital ratio compliance as defined by Rule 325 of the New York Stock Exchange Rules, is that correct?

A That is correct.

Q Will you tell the Court briefly what that rule requires of member firms and what the net capital rule means?

qp3 Womack-direct

A Briefly the Rule 325 or the requirements of Rule 325 are to assure that the member organization can discharge all of its liabilities and it discounts or completely writes off the various assets that are not considered current within the meaning of the rule. In addition to the writing off of those non-admissible assets in the computation it discounts substantially security positions and bond positions which are readily marketable and can be sold readily. It discounts their common stock generally 30 per cent of theirquoted value in the computation. Certain liabilities, those generally that involve the use of customers' assets or liabilities directly to customers are included in a computation that is known as aggregate indebtedness. The total of aggregate indebtedness when compared to the "net capital", this is after the various discounts and the writing off of assets, cannot exceed a 1500 per cent ratio. In effect, this means that for every dollar of liability to customers or customer-related liabilities there is an effective requirement of 6-2/3 per cent of net capital to carry that dollar of liability.

In addition, there is a minimum capital requirement, capital dollar requirement, which relates to the type of business that the organization does.

qp4 Womack-direct

A member organization which engages in activity either with or for customers or with the public is required to maintain a minimum amount of net capital of at least $100,000. So the requirement is the greater of $100,000, in this instance, or 1500 per cent of the aggregate indebtedness ratio not to exceed 1500 per cent.

Q And if the aggregate indebtedness ratio exceeds 1500 per cent the member organization is subject to suspension from the right to continue to do business as a member firm, is that correct?

A That is correct.

Q If I understand you correctly it is your function or the function of the staff of Examiners at the Exchange to monitor member firm capital compliance on and ongoing regular basis?

A That is correct.

Q In that connection you and other Examiners at the Exchange make periodic surprise audits of member firms?

A We made periodic surprise visits and conduct examinations. I differ with the use of the word "audit." It is not an audit.

Q And in the course of supervision activities that you describe, if you detect any bookkeeping irregularities

qp5 Womack-direct

it is your function, is it not, to report it to other people in the Exchange for the institution of enforcement processes?

A That is correct.

Q From the time that you were assigned as the Chief Staff Examiner to conduct an inspection of the books and records of Weis Securities in April of 1972 until the Exchange staff concluded its audit function or examination, how many staff members of the Exchange participated in the review of Weis' books and records?

A To the best of my recollection, probably as many as 30 different staff members. This is not to mean that there was continuous participation. Some individuals may have participated for a very short period of time. Other individuals' participation was generally for the whole period, while some may have been for a limited period of a week or two.

Q And these people reported to you?

A That is correct.

Q And you, in turn, reported your findings to Mr. Pape and Mr. Nelson?

A Yes.

Q And to Mr. Shields?

A I would say primarily to Mr. Shields and secondar-

qp6 Womack-direct

ily to Mr. Pape and Mr. Nelson.

Q Mr. Womack, I suppose this is true, and perhaps you can confirm it for us, if a brokerage firm continues to lose in its operations substantial quantities of money on a profit and loss basis, that that affects its capital ratio adversely?

A Yes.

Q And as it loses more money it becomes imperative for it to find additional capital, or otherwise depending on its situation, it would exceed the 1500 per cent aggregate indebtedness ratio required by Rule 325?

A Yes, it would, through a continual loss. Of course, it would have to be related to the base amount of net capital that the firm has, but that is correct.

Q And I take it that in the course of your duties it has come to your attention in the period of late 1972 and early 1973 that this was generally a distress period on Wall Street?

MR. PUTZELL: I object to this line of questioning. I think it's totally irrelevant to the issues before the Court.

THE COURT: I am inclined to agree with that. I think that you are entitled, Mr. Kramer, to probe to see what was done and what the relationship was as

to the SEC. But what the status of the market was I don't think has any relationship to the problem.

MR. KRAMER: If your Honor please, I am trying to demonstrate that because Wall Street was in a chaotic state that the Department of Member Firms of the New York Stock Exchange and the SEC were really engaged in on-going surveillance of member firms which were on the brink, as it were.

THE COURT: All right. You may proceed.

A I would have to answer the question yes.

THE COURT: Read the question again.

(Question read.)

A May I qualify that answer. I thought that you had referred to profitability but in the question being read back it did not contain that word. It was a very unprofitable period generally.

Q And there were a number of member firms that were in capital difficulty during that period?

A Yes, from time to time.

Q Mr. Womack, there has been some testimony here that Mr. Lynn, the acting controller of Weis Securities, first approached you in early May of 1973 and discussed with you some improper entries that had been made by you him or under him on the books and records of Weis

Securities?

A I think it's incorrect that he discussed it with me. At a point in time he did appear at the Exchange and make a statement. When that statement was made some of these things were brought out. He did not discuss them with me prior to that time.

Q There has been introduced in evidence earlier at this hearing a memo from Mr. Shields dated May 9, 1973, and I will quote from that memo:

"Jack Womack has reported that Bob Lynn, the present controller of the firm, told him yesterday that Joel Kubie had left the firm because there was no place left to hide the figures and that 'they, the firm, had determined to use the bank loans to hide the unrecorded expenses.' Bob made an additional statement that he had told Sol Leit they did not intend to go to jail and would cooperate fully with the Exchange Examiners."

Does that file memorandum of Mr. Shields refresh your recollection concerning the conversation referred to?

A Yes, it does. There was so much going on there that when you say "discussed" I didn't recognize it by narrowing down any specific instance. Of course, there was the $2,000,000 bank loan which we felt was improper

qp9 Womack-direct

and a million and a half dollar bank note reduction which we felt was improper.

Obviously we did discuss these items but not in the context that they had any criminal intent because we didn't get into that whatsoever.

Q Don't anticipate me, please, Mr. Womack. I didn't ask you that question. I am trying to determine what conversations you had with Mr. Lynn on or before the date of this memorandum.

I take it from your previous answer that at that point the Exchange Examiners at Weis had come across the question of the 1-1/2 million and 2 million dollars in entries on the Weis books and records?

A Yes.

Q And you had questioned Mr. Lynn about those entries?

A Yes.

Q Can you tell the Court in a general way what was involved in the two particular entries and why you concluded that there were improper entries?

A We had determined that entries had been put through and recorded on the books and had made an effort to obtain the actual entry itself and were unsuccessful in obtaining that entry. The effect of the entries that were

qp9a Womack-direct

put through reduced the bank loan in the first instance, beginning in February, by a million and a half dollars and increased various income accounts and reduced various expense accounts.

T 1A
A.M.

Q And the $2 million entry?

A The $2 million substantially having the same effect but prior to its entry the million and a half previous entry had been reversed.

Q But the net effect of the $2 million entry was merely to increase the amount of the error reflected in the million and a half entry?

A By $500,000.

Q And I take it that you had determined at that point -- this is early in May -- that this was a completely fictitious bookkeeping entry, that in fact the bank loans had not been reduced by a million and a half or $2 million?

A That is correct.

Q And you then confronted Mr. Lynn with that conclusion on your part?

A No, not confronted Mr. Lynn. We recognized or I certainly recognized that this was an area that was quite serious. As it appeared, it would be serious. My idea was not to confront Mr. Lynn or anyone there but to try to determine what the effect of this entry as well as the ongoing examination -- at that point we would have to call them errors, to determine what effect that had on the current status of the firm and its financial position. That was utmost in our minds at that particular point.

Q Did you discuss these two entries which you discovered in the course of your audit examination with Mr. Lynn prior to May 9, 1973?

A Yes.

Q What did he tell you about those two entries?

MR. PUTZEL: I am going to object to that on this basis: There is no question in the world, and we will stipulate to it and we will point the Court's attention to the testimony on the fraudulent bank repayment entries that were discovered by the New York Stock Exchange and were the subject of testimony by Lynn prior to the time that Solomon testified on May 17th.

In my judgment, the only thing that Mr. Womack can do is duplicate the evidence that is before the Court in the exhibit which is Lynn's testimony. It seems to me we are wasting a lot of time going into what is really undisputed in this case.

The question is essentially whether there were legitimate civil objectives that the New York Stock Exchange and the SEC had in pursuing these matters, and whether they pursued them in the course of that.

MR. KRAMER: If your Honor please, I think that the timing here is quite significant. We have the memorandum of Mr. Shields which is already in evidence which

discusses the SEC's concern as early as May 11th with possible criminal indictments. I am trying to determine when the criminal matters first came to the attention of anybody in a supervisory or surveillance capacity, either at the Exchange or at the Commission.

THE COURT: All right. But I don't think we need to do that.

If that is the purpose of the question, it seems to me that that is a specific question that can be asked and you can telescope it by asking him when did he learn or upon his conclusion that it was criminal violation.

MR. KRAMER: Mr. Womack's function was merely to examine the books. He has told us that he discovered this wholly fictitious entry some time prior to May 9th and now a man who was responsible for having put it on the books was at Weis' premises and had a conversation with Mr. Womack, I take it, on May 8th concerning this very matter and I am trying to determine what he learned in that conversation. It comes down to that.

THE COURT: My only problem is that I think Mr. Putzel is right. I don't want the substance of the conversation to duplicate what we already know. It seems to me what youwant to find out, and you are entitled to, is at what point did the New York Stock Exchange learn

that there had been some possible criminal infractions. It seems to me you can ask him that question right now.

MR. KRAMER: There is a certain amount of fencing going on here.

MR. PUTZEL: May I add one other thing for the record and I don't want to belabor this but at page 7 of Kubie's Stock Exchange testimony of May 10th, 1973 is the following exchange with referference to the million and a half dollars and the question is by Mr. Womack:

"Q Did Howard Levy have knowledge that you were aware of that this entry was put through for a million and a half?

"A I don't know. I really can't say that.

"Q So as far as you know yourself Sol Leit, Arthur Levine, and Bob Lynn had knowledge of that particular entry?

A And Alan Solomon.

Q And Alan Solomon."

The million and a half dollars was discussed in that May 10 interview with Kubie. We would be willing to stipulate that at that point the essential fraudulent nature of the million and ahalf dollars was known to the Stock Exchange and that there was testimony to that effect on May 10th.

MR. KRAMER: It was known before then.

THE COURT: This conversation that Womack had, I would proceed on that.

MR. PUTZEL: I don't understand why that is necessarily relevant, your Honor.

THE COURT: I think the relevance of it, from Mr. Kramer's point of view, is that he wants to get on the record the earliest date that the New York Stock Exchange reached the conclusion or realized that some criminal violations had occurred and based upon that to seek to show that they were operating jointly with the SEC. That is what his purpose is. That is what the whole point is. That is why we are here.

MR. PUTZEL: I know, your Honor, but it seems to me that if he establishes at any time prior to the time testifies that there was suspicion of criminal activity he has made his point for whatever it is worth and I think we will contend it is not worth very much. But I agree he has a right to make it. It is beyond any doubt at all --

THE COURT: I tyink that by arguing about it we have wasted more time than by allowing him to get it out.

Let us proceed.

Q Mr. Womack, leaving aside now your conversation

with Mr. Lynn on May 8th, when for the first time did you run across the fraudulent entries in the books and records of WEis Securities?

A Very shortly after the examination began on April 13th. That was a Friday. I would say the following Monday or Tuesday we determined very quickly the effect of the entries as they were recorded on the books, the $2 million. We tried to obtain documentation, the actual entry itself. As soon as we recognized and saw the effect of this entry I think everyone involved knew that there had to be --

Q Fraud, say it?

A Yes, fraud. But our primary concern was to try to superimpose that on the capital position that we were trying to determine and come up with a true financial status of the firm.

Q How soon after the commencement of your examination on April 13th did you determine that these two particular entries which reduced bank loans when the bank loans in fact had not been reduced out in the real world did you dissover the fictitious nature of these entries?

A I would say the $2 million entry possibly Monday after the examination begaon on the previous Friday no later than Tuesday, and the million and a half dollar entry, the effect of the million and a half dollar entry

that had been made previous to that was probably known on the latter part of that week.

Q Which would be about by April 20th?

A Yes.

Q You reported these facts to Mr. Shields?

A Yes.

Q Did you, while you were on the premises of WEis Securities, try to determine who was responsible for the making of those two fictitious entries?

A Yes, we did by trying to get the documentation and the record itself. But we avoided trying to interrogate individuals or interrogative techniques. We were trying to obtain the books and records, the records themselves.

Q And the interrogation then, if I understand you, of the particular people who were responsible for making those entries commenced some time early in May?

A That is correct.

Q And at that point you zeroed in on Mr. Lynn as being the person who had knowledge of and was responsible for making actually entries, fictitious entries, on Weis' books and records?

A These came out as a result of his statement to me.

Q His statement to you on May 8th?

A I don't remember the date specifically. Particularly the part of the statement that he had spoken to Mr. Leit and had advised him that he didn't plan to go to jail.

Q But in this memorandum that I read you of Mr. Shields which states in effect the conversation took place on May 8th refreshes your recollection? That was the first time you heard from Mr. Lynn about the talk about not going to jail and that he was responsible for writing those fictitious entries on Weiss' books and records?

A That is correct.

MR.KRAMER: No further questions.

CROSS EXAMINATION

BY MR. PUTZEL:

Q Mr. Womack, I will be very brief.

As a principal examiner for the New York Stock Exchange you are charged with the various responsibilities which you outlined to Mr. Kramer, is that correct?

A Yes.

Q You mentioned that some of the responsibilities that you were charged with, some of your investigative objectives are measured by rules of the Securities and Exchange Commission, is that right?

A Yes.

Q Is that because of the fact that the New York Stock Exchange and the SEC have parallel powers and parallel rules that guide the prosecution or the investigation of certain firms in a financial condition?

MR. KRAMER: I object to the form and the purpose of the question. In fact, the relationship of the New York Stock Exchange and the SEC in matters related to net capital reporting and net capital compliance are the subject of extensive statutory provisions and extensive regulatory provisions. It is a matter of law which your Honor can consider at the appropriate time.

MR. PUTZEL: I think the Court has considered it already.

I have no further questions.

THE COURT: Thank you, Mr Womack.

(Witness excused.)

THE COURT: Call your next witness, Mr. Kramer.

MR. KRAMER: Mr. Nelson.

S T U A R T K. N E L S O N, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Nelson, you were employed by the New York Stock Exchange until quite recently?

A That is correct.

Q In what capacity?

A I was assistant vice president for the Department of Member Firms in charge of two areas, the enforcement area and the liquidation area.

Q How long had you held that position?

A I joined the Exchange on September 24, 1970 and departed therefrom on April 1st of this year.

Q What has been your experience prior to joining the Exchange?

A I had worked for law firms and corporations in the securities business.

Q I take it you never worked for the SEC?

A No, I did not.

Q But you are an attorney?

A Yes, I am an attorney.

Q When were you admitted?

A I was admitted April 1, 1957, I believe.

Q Mr. Nelson, what were your duties and responsibilities as assistant vice president of the New York Stock Exchange in charge of enforcement activities, that part of your duties?

A Together with my staff, to investigate any violations of the New York Stock Exchange constituion and rules and any wilful violations of the Securities and Exchange Act of 1934.

Q How large a staff did you have reporting to you to enable you to faithfully perform that function?

A It varied from the time I started with the Exchange. I would guess about 14 people to the time I left the Exchange, I would guess about 20 to 24 people.

Q And those people in 1973, which is the critical time with which we are concerned, were for the most part lawyers?

A Yes.

Q And I take it also that the staff of Exchange examiners were also available to you to assist you in your enforcement function?

A Yes.

Q Although they didn't report to you directly you could call upon them in specific instances when

a suspected violation was being investied?

A Yes.

Q We have heard Mr. Womack testify that there were between 65 and 73 Exchange examiners engaged in the surveillance of member firm capital compliance. Does that accord with your recollection of the facts?

A Yes, that would accord with my recollection.

Q Mr. Nelson, coming to the WEis Securities matter, were you yourself involved in the investigation of what can properly be characterized as the bookkeeping frauds that were discovered by the Exchange?

A I was supervising this investigation and I supervised all investigations taking part on behalf of the Exchange at the time. The word that is confusing me is the word involved.

Q You were overseeing or were the overseer of this investigation?

A Yes, I was.

Q And in fact you were the person who would have to give instructions to initiate the investigation?

A Not necessarily.

Q How was this investigation initiated, if you recall?

A I am not sure if it was called to my attention

by Mr. Biship who was my supervisor or whether it came to my attention from the examiners or Coordinators Division of our department.

There may be some meoranda that indicate how it was referred to my attention.

Q Let us see if I can refresh your recollection from some other evidence that has been adduced during the course of this hearing.

We know that Mr. Joel Kubie, who is the former controller of Weis Securities was first interrogated on the record by your department, the Enforcement Division, on May 10, 1973. Would that refresh you or give you some point of reference as to when the investigation itself was initated?

A Clearly prior to the time Mr. Kubie testified because we would have had to arrange to have Mr. Kubie come in and testify. I don't know how much prior thereto though.

Q You don't at the present time have any independent recollection of how many days or weeks prior to the Kubie testimony on the record that the formal investigation by the Exchange was put in the works, as it were?

A No.

Q Whether it was a matter of days or weeks you

don't recall?

A More likely days than weeks. The investigation by my department that is.

Q By the lawyers in your department?

A Yes.

Q Mr. Nelson, the function of the sort of investigation which was commenced, the taking of Mr. Kubie's testimony on the record on May 10th, is to determine whether charges shall be brought again members of the New York Stock Exchange and allied members and employees of allied members, is that not correct?

A Yes, that is one of the purposes.

Q That was the purpose in this case?

A Yes.

Q Indeed on the 4th of June 1973 after the Exchange had concluded its investigation under your supervision memoranda of charges were filed against five Weis officers or employees or ex-employees, is that correct?

A Yes.

Q And those five people were Messrs. Leit, Levine, Kubie, Lynn and Solomon?

A Yes.

T2

MR. KRAMER: Now, your Honor, I would like to offer in evidence a memorandum of charges against Sol Leit, allied member and president of Weis Securities, Inc., under the heading of the New York Stock Exchange, Department of Enforcement, which is dated June 4, 1973, and is signed by Stuart K. Nelson, assistant vice-president.

MR. PUTZELL: No objection.

(Defendant's Exhibit L received in evidence.)

xx

BY MR. KRAMER:

Q Mr. Nelson, were substantially the same charges which are set forth in Defendant's Exhibit L in evidence set forth in the memoranda of charges which were filed on the same date against the other four Weis principals whom I have named, as you recall?

A The charges that the Exchange issued speak for themselves. To the best of my recollection, I would think they are basically similar charges.

Q And those, as you say, were the end product of the investigation which commenced some time prior to May 10, 1973?

A Yes.

MR. KRAMER: No further questions.

lp2 Nelson-cross

CROSS EXAMINATION

BY MR. PUTZELL:

Q Mr. Nelson, you testified that one of the purposes of the enforcement proceedings was to bring charges.

Will you tell us what the other purposes were?

A To determine where there were no violations, not to bring charges.

Q And I assume that another purpose was to carry out the functions of the Exchange in supervising the net capital situation at Weis and to determine whether it was sufficiently liquid to continue in business, isn't that correct?

A Yes.

MR. PUTZELL: No further questions.

REDIRECT EXAMINATION

BY MR. KRAMER:

Q Well, you knew at the time that this investigation was begun, Mr. Nelson, that there was a serious situation of fraud.

You heard Mr. Womack testify, and you knew that before this investigation was undertaken that there were fraudulent entries on the books and records of Weis Securities?

lp3 Nelson-redirect

A Listening to Mr. Womack, sitting as a spectator, I heard his testimony to that effect. To the best of my recollection, the answer to your question would be yes.

Q All right.

A In other words, that there were allegations of fraud, of bookkeeping violations and fraudulent bookkeeping violations were being investigated.

Q That was the purpose of this investigation, not to determine whether --

A No, another purpose of this investigation was to determine the amount of capital in that firm. In other words, we had the obligation -- not the obligation, but there was an obligation with respect to customers. The Exchange supervises the net capital rule, and one of the things, there were allegations that the figures we had seen were not accurate figures, and we were trying to determine what the accurate figures were.

Q All right, I am not going to argue the point any further, Mr. Nelson. The point that I have been seeking --

A Mr. Kramer, all I am suggesting is that there was in addition to investigating to determine whether or not there were violations, and if there were violations, the severity, and to determine whether or not charges should be issued. Another reason we were investigating the

situation was to determine what the financial structure of Weis Securities was at that time.

Q And those two purposes were not in conflict?

A Not at all.

THE COURT: All right, thank you, Mr. Nelson.

THE WITNESS: Thank you.

(Witness excused.)

MR. PUTZELL: Your Honor, I should place on the record that Mr. Kramer has been cordial enough to accommodate the schedules of some witnesses, notably, Mr. Moran, the Regional Director of the SEC, who can be here at 11.30, and Mr. James Schreiber, who has recently left our office and is now in private practice, and will be here at 12, and I would ask that in the event there is a problem, we can interrupt whoever is on the stand so we can take those individuals in that order if it is convenient.

THE COURT: Is that agreeable to you?

MR. KRAMER: I have no objection to that, sir.

MR. PUTZELL: Thank you very much.

lp5

J E F F R E Y S. M O R R I S O N, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

MR. KRAMER: Mr. Putzell, may I at this time call on the government to produce the order of investigation entered by the SEC, according to the prior testimony, on May 15, 1973, together with any supporting memoranda submitted at the time that that order was issued?

MR. PUTZELL: I understand it is in the witness room. I will get it.

May we have this marked for identification. I don't care which side -- well, it is your witness. Go ahead and mark it as a defendant's exhibit.

(Defendant's Exhibit M marked for identification.)

MR. KRAMER: May I have just a moment, your Honor?

THE COURT: Yes.

MR. PUTZELL: While Mr. Kramer is looking at that, I also have here and I would think we should mark, I believe, as a Court's exhibit, since they are court documents, copies of the complaint signed by Mr. Morrison and the order to show cause which was, I believe, signed by Judge Gurfein dated May 24, 1973, which are court

lp6 Morrison-direct

documents, but which I think should be before this Court for the purposes of this hearing.

THE COURT: All right.

(Court's Exhibits 1 and 2 marked.)

MR. KRAMER: Can we offer this in evidence?

MR. PUTZELL: Sure.

(Defendant's Exhibit M received in evidence.)

DIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Morrison, Defendant's Exhibit M in evidence, the memorandum to the Division of Enforcement from Mr. Moran, dated May 14, 1973, which supported the issuance of an order on May 14, 1973, directing the private intestigation in the Weis Securities matter, has been obtained from the United States Attorney. I take it you are familiar with the contents of these documents?

A Yes, sir, I am.

Q Mr. Morrison, had you any connection at all with the Weis Securities matter prior to the date, May 14?

A Yes, sir, I had.

Q What was the extent of your involvement?

A I was the Senior Examiner who was assigned to the matter by the Commission.

lp7 Morrison-direct

Q I would like to find out what your job is and what it was in May of 1973?

A In May of 1973 essentially my job was one of interpreting the data which came in. I was the financial man, so to speak, in the investigation. My job was to examine the financial documents, the accounting documents, and interpret those through the attorneys on the staff.

Q You are an accountant by training?

A Yes, sir, I am.

Q How long have you been an employee of the SEC?

A Approximately two and a half years.

Q And prior to that time?

A I was with the New York Stock Exchange.

Q And you were a staff Examiner at the New York Stock Exchange?

A Yes, sir, I was.

Q Performing the same sort of functions as Mr. Womack performs for the New York Stock Exchange?

A Essentially the same.

Q How long had you had that job?

A Approximately two and a half years.

Q Now, when did you first become aware of the Weis Securities matter and when were you first assigned to work on the case?

A Well, in answer to your first question, I don't know specifically when I was assigned. I first became are of the situation on April 27, a Friday afternoon.

Q And how did you become aware of it?

A Bill Nortman, who was the Assistant Regional Administrator, called me into his office and essentially advised me of a phone call which he had received from our Washington office, and he asked me my opinion on certain situations involving what the actual phone call had meant from Washington.

Q Give us the conversation as best you recall it.

A He asked me what the 1400 per cent ratio meant, and he --

Q What did he say to you? He reported on the conversation he had gotten from Mr. Finnegan in Washington, was it?

A Yes.

Q Just go through the conversation. Assume we know nothing about the matter.

A Mr. Nortman had indicated to me that he had received a phone call from Mr. Finnegan in Washington advising him that Weis had reported through the New York Stock Exchange that their capital ratio was approximately 1400 per cent.

Mr. Nortman had asked me essentially what the 1400 per cent represented and what effect, if any, did that have on the ability of the firm to meet its current obligations.

Q What did you tell him?

A I told him that the 1400 per cent was within the guidelines of the 15-to-1 ratio. However, it affected two other New York Stock Exchange rules, specifically, the expansion and reduction ratios which were 12-to-1 and 10-to-1 respectively.

Q Were you given any duties in connection with the Weis matter at that time?

A No, sir, I was not.

MR. KRAMER: Would your Honor excuse me for just a moment? A document has just come down from the office.

THE COURT: Yes.

BY MR. KRAMER:

Q Following this initial conversation with Mr. Nortman, what was your next contact with the matter?

A I would assume approximately a week or ten days afterthis,which would put us around the 9th or 10th of May, I believe, at this point the New York office had received, I assume, information to the effect that the

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financial condition of Weis was deteriorating, and at that point I was assigned to an examination of the firm.

Q So that was some time about the 7th or 8th of May?

A It may have been later than that, I am not sure.

Q You have no notes or memoranda indicating when you first became involved or what happened following your April 27th conversation with Mr. Nortman?

A I have no notes or diaries to refresh my recollection, I am sorry to say.

Q Well, in any event, what was the next step that you took in connection with your duties on this matter?

A At thispoint essentially my duties became a liaison between the New York Stock Exchange and the SEC. I should hasten to add that at this point I was not spending 100 per cent of my time on Weis; I still had other matters which were deemed critical, so I attended some internal meetings at the SEC and I advised them in certain situations as to the facts which had been coming in regarding the financial condition of the firm.

Q You were getting some information about the Weis condition from people at the Exchange?

A In some instances I would assume that the information was coming from the Exchange. In other

instances I was confronted with numbers and asked to analyze them and interpret those numbers. Where those numbers came from, I don't know.

Q You said you were acting as the liaison?

A In some instances.

Q Did you prepare for the SEC staff members with whom you were working any memoranda concerning your contacts with Exchange personnel?

A Not that I recall. Internal memoranda? I don't believe so.

Q Do you remember anything that you had been told during this week of May 7 by Stock Exchange personnel concerning the Weis matter?

A Specifically I recall various things, suchas the deteriorating financial condition of the firm; the fact that the conditions seemed to be mounting rather than abating. With regard to specific disclosures, I have no recollection.

Q No independent recollection?

A No, sir.

Q Mr. Morrison, this memorandum which supports the issuance of the private order of investigation, and is dated May 14 -- I am reading from page 4:

"According to information supplied by the

New York Stock Exchange certain questions have arisen with respect to the underlying cause for the relatively sudden emergence of the net capital problem at Weis.

"Specifically, information developed indicates that the former comptroller of the firm, Joel Kubie, may have deliberately falsified or doctored the records of the firm to understate expense items.

"It further appears that this practice may have been extant from at least 1972 through March, 1973, and that three officers of the firm in addition to Kubie may have deliberately and knowingly falsified the records in question.

"The firm's expenses may have been understated by at least 2-1/2 million dollars."

Now, with reference to that memorandum, I will ask you whether any of the obligations which I have just read were based on information which you had obtained from New York Stock Exchange personnel?

A I may have.

Q But you don't have any independent recollection?

A At this point you must understand information was coming in to not only myself but in to Mr. Nortman, Mr. Mandel and Mr. Tucker as well as Mr. Ormstem.

So, conceivably, the information may have come

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to them initially, and I became aware of it through them.

Q May 14 was a Monday, according to my calendar for 1973.

A Okay.

Q Did you see this document while it was in the process of preparation?

A I don't believe I did, no.

Q Did you see any prior drafts of it before it was completed?

A It would normally be in the purview of my responsibilities to see a legal document such as this which was prepared. I may have had some discussions as to the contents of it subsequently or prior to it, but I certainly don't recall seeing it before it was prepared.

Q Ordinarily you would but in this instance vou don't recall?

A No, ordinarily I would not.

Q You were not, excuse me.

A That is right.

Q Mr. Morrison, Court's Exhibit 2, which is the order to show cause and temporary restraining order in the civil action brought by the SEC against Weis Securities and the five defendants in this criminal case to obtain the appointment of a temporary receiver for Weis, and

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there is annexed to that order to show cause your affidavit.

That affidavit states that on May 16, 1973, you visited the premises of Weis Securities.

Do you recall that visit?

A Yes, sir, I do.

Q And what was the occasion for the visit?

A The occasion of the visit, as I recall, was, Mr. Mandel, I and Mr. Tucker visited the firm to review the financial papers which had been in the process of being prepared, revised and updated by Mr. Womack and the staff aswell as to serve a subpoena, if I am not mistaken.

I believe we did on the 16th.

Q You served a subpoena on Mr. Womack?

A No, we did not. We served a subpoena on Mr. Buck, the secretary of the New York Stock Exchange.

Q On Mr. Womack?

A No, I believe we may have had our copy, but, as a matter of fact, we did not give it to Mr. Womack; we gave it to Mr. Pape.

Q There has been testimony by Mr. Pape that Mr. Tucker and Mr. Mandel came to his office at the New York Stock Exchange on May 16 and delivered a subpoena calling for the production of all of the New York Stock Exchange records relating to the Weis investigation. That subpoena

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is in evidence.

Now, I am trying to determine whether you went first to the Weis Securities offices and then to the Exchange or vice versa?

A Actually, Mr. Kramer, there were three steps involved, the first step being the stop at 11 Wall Street where Mr. Buck's office is; then proceeding south we went to Weis Securities, and we stopped off there.

Thirdly, I believe we walked over to Water Street and I think showed Mr. Pape a copy, our copy, a carbon copy of the subpoena.

I believe that is the chronology of what occurred.

Q Now, you started from the SEC offices across the way?

A We walked, that is correct.

Q And when did you start?

A I am not sure whether it was in the morning or the afternoon, sir.

Q And the stop at Mr. Buck's office was just for a few minutes to leave a copy of the subpoena?

A It was merely to drop the subpoena off, that is correct.

Q The next stop was the Weis Securities offices

at 17 Battery Place North?

A That is correct.

Q And you went up to what floor in the building?

A I believe it was the sixth floor; whichever floor the Exchange Examiners were occupying is where we went.

Q And you went to visit with the Exchange Examiners?

A Yes, we did.

Q And how long did your visit take?

A I would say a half-hour at the most.

Q And did you get any records from them at the time?

A No, we did not; not at the time.

Q You had a discussion with Mr. Womack?

A Yes, we did.

Q And did he fill you in in a general way as to where he was in his investigation and what had been developed?

A Yes, he did.

Q He updated the information which you had already received as reflected in Defendant's Exhibit M?

A By the 16th we were requesting information from the Commission and from the firm on a daily basis.

Q From the Exchange?

A That is correct.

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Q And from the firm on a daily basis?

A From the firm, meaning the Exchange Examiners, not from the firm direct.

Q Did you or Mr. Mandel or Mr. Tucker, if you know, make a memorandum of what you were told at your May 16th meeting with Mr. Womack?

A I did not. Whether they did or did not, I don't know.

Q Do you have any independent recollection of what was said during the course of that meeting?

A I really don't.

I recall that Mr. Womack indicated the situation seemed to be worsening, and he indicated that certain items in the Woodwork schedules which had been turned over to the Exchange had been verified, and he - "he" meaning his Examiners - were proceeding to verify those positions.

That was our main concern.

Esentially our visit was to ascertain what the financial condition of the firm was. So we were satisfied in learning some of the items in the Woodwork schedule had been verified.

Q I am sorry, I don't know what you mean when you say that some of the items in the Woodwork schedule had been verified. Can you clarify that?

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A The Woodwork schedules were those schedules which essentially were the firm's second set of books. They represented the true situation regarding the firm's profit and loss and the firm's financial condition. Those documents, as I understand it, were turned over to Mr. Womack or one of the Examiners, or one of the staff members of the New York Stock Exchange.

Q Had been turned over to him prior to the May 16th meeting?

A That is correct.

Q Had you seen them prior to the May 16th meeting?

A I don't believe I had. This is the first time.

Q And had you discussed their contents, or were you aware of their existence prior to May 16?

A I believe I was ware of their existence. I had not seen them.

Q Had you discussed in a general way what was on the Woodwork schedule with anybody in the Exchange prior to your May 16th visit?

A I believe I did.

Q And, indeed, that is the basis for the general allegations that I have read to you from Defendant's Exhibit M, the conversations of this nature which you had had with Mr. Womack about the existence of a Woodwork schedule?

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A I would think that is accurate.

Q Did you discuss with Mr. Womack during your May 16th meeting the two fictitous bank loan entries, the one in February for a million and a half dollars, and the one in March for two million dollars?

A We may have, sir.

Q You were aware of them at that point?

A I was certainly aware of them; I was certainly aware of the fact that they were the main contributory factor to the false bookkeeping, but I do not believe that either of those two items were on the Woodwork schedule.

Q Well, that is what I am getting at: this was another area of knowledge that you had come into possession of at or prior to your May 16th meeting; that is correct, isn't it?

A Yes, it is.

Q Now, do you recall how that information was first conveyed to you?

A That information came to me from another member of the staff of the Commission. Just who, I don't recall.

Q Can you narrow the field?

A I can narrow the field. I am sure it won't help. I can narrow the field. Tucker, Mandel, Nortman or Ormstem.

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Q Do you know how they came into possession of this knowledge?

A I do not, sir.

Q Nor are there any memoranda or notes or records of the Exchange which would reflect that?

A There may be; they may exist; I haven't seen them.

MR. KRAMER: Mr. Putzell, is the government in posession of any such records in response to our subpoena?

MR. PUTZELL: Wait a minute. We received no subpoena as to any such records. I am not sure that we really are obliged to produce internal documents in the SEC which relate to it. In any event, it seems to me it is irrelevant.

MR. KRAMER: Let me for the Court's benefit review what the procedural situation is:

After your Honor had scheduled this hearing I served subpoenas on the New York Stock Exchange people requiring production of the various documents from which I have extracted the material that has been offered in evidence and from the New York Stock Exchange files.

I also advised Mr. Putzell that this is what I was doing, and I sent him copies of the subpoenas.

I wrote him a letter saying that I expected the

government to produce at this hearing the SEC files and records relating to the preliminary investigation of May, and if he had any objection to that procedure he should let me know and I would subpoena the SEC records directly if he did.

Now, I assume fromthe fact that he did not respond to that letter that he was willingly, voluntarily going to produce those records here.

If that is not the case we will adjourn and I will serve a subpoena.

MR. PUTZELL: The only partof Mr. Kramer's statement that I take issue with is whether we were ever asked to produce files and internal documents of the SEC.

I am looking for the letter right now. I recall no such request. I certainly recall no verbal request.

I stated I would be happy to try and facilitate this hearing by producing the witnesses who are necessary.

Now, insofar as documents and internal memoranda of the SEC bearing on the preliminary investigation, I would vigorously resist any subpoena served on the government to that effect, for a number of reasons, most basically that they are internal government memoranda that really are not discoverable in this connection.

MR. KRAMER: Will your Honor hear me --

THE COURT: We don't know whether they are discoverable or not. The issue in this case or in this hearing is to determine the role and relationship between the SEC and the New York Stock Exchange in respect to investigation and leading up to the testimony of Mr. Solomon. It may well be that they have no relevance, but I think at the very least what has to be done, if any such documents exist, is to present it to me for some sort of determination as to whether they have any relevance rather than determination by one side. I can't make a ruling with regard to their relevance without being afforded some access to the documents.

MR. PUTZELL: My point is, your Honor, that these are internal government memoranda.

THE COURT: It may well be that these government memoranda indicate or do not indicate the question that Mr. Kramer is raising, and they might indicate the very involvement of the New York Stock Exchange as an enforcement arm of the SEC. It could. I don't know.

MR. PUTZELL: Let me respond to that in two ways:

First of all, I have no wish to obstruct these proceedings. Quite the contrary.

I had thought that my arrangement with Mr.

Kramer was designed to facilitate the proceedings, and I, quite frankly, don't recall any request for our files and documents.

Secondly, it is going to be a task, I would think, of major proportions to try and locate all of the internal SEC files which relate to the genesis of the Weis investigation, and I, quite frankly, had not expected that that would be a subject for discovery here.

Now, the other factor, your Honor, is this: I will be prepared to stipulate essentially that there was free give and take between the Exchange and the SEC, as has been developed by testimony so far.

The essential question is the one that was posed in the Court's opinion on the subject, which was whether there was a bad faith situation by which the SEC was using the Stock Exchange to run around any requirements -- well, to coerce testimony, effectively. That is the issue in this case, and it seems to me that is a much narrower issue than the one Mr. Kramer is seeking to explore here by looking at these memoranda of documents.

THE COURT: It may or may not be, that is the only problem I have, Mr. Putzell. It could be; it could not be. It may be that he is right.

But I think what we are going to have to do,

Mr. Kramer, is see what you can get from the participants.

MR. KRAMER: Your Honor, I represent to the Court that I did make a written request of Mr. Putzell, and I do not have a copy of my letter here, and if he looks in his file he will find it --

MR. PUTZELL: Look, that is not the point, and Mr. Kramer knows it. I am perfectly willing to do whatever the Court tells me to do, and --

THE COURT: I think what we ought to do is proceed with the witnesses, and when we come to the closing of the hearing, if there is any failure of memory and things of that kind, things that may be clouded, we will then address ourselves to that question.

MR. KRAMER: I am having that problem with Mr. Morrison now, which is why I thought if there were in existence any memoranda, that that would assist him in fixing times, places and conversations.

As he says, two or three weeks prior to the application for a temporary receiver when Weis was effectively forced out of business, a lot was going on.

THE COURT: It may well be.

I understood there are two witnesses who, whether they had a greater role in the investigation or not, they were apparently higher up in the hierarchy of

the SEC than this witness, and maybe we will find out from them.

MR. KRAMER: Fine, your Honor.

THE COURT: Why don't we take a 10-minute recess.

I gather at this point we will break off the testimony of Mr. Morrison to hear -- who is coming?

MR. PUTZELL: Mr. Moran.

THE COURT: -- to hear Mr.Moran.

MR. PUTZELL: Thank you.

(10-minute recess.)

MR. PUTZELL: For the record, Mr. Moran is here and we are grateful to Mr. Kramer for agreeing to take him out of order.

W I L L I A M D. M O R A N, called as a witness, being duly sworn, testified as follows:

MR. KRAMER: I offer in evidence a memorandum of a conversation dated May 14, 1973, apparently prepared by William Nortman, an Assistant Regional Administrator of the SEC, which Mr. Putzell has produced from the government's files.

(Defendant's Exhibit N received in evidence.)

MR. PUTZELL: I have no objection.

MR. KRAMER: And will you mark another memorandum produced by Mr. Putzell dated May 15, 1973, which states that it is a supplemental to Mr. Nortman's foregoing memorandum but the author of which remains unknown, as Defendant's Exhibit O, I guess.

(Defendant's Exhibit O received in evidence.)

DIRECT EXAMINATION

BY MR. KRAMER:

Q Mr. Moran, what is your title and position with the SEC?

A Regional Administrator of the SEC in New York here.

Q How long have you held that position?

A Acting and Regional Administrator since November, 1972.

Q How long have you been employed by the SEC?

A 34 years.

Q How long have you been employed in the New York office?

A Since 1947.

Q Prior to the time that you became Regional Administrator what was your position?

A Associate Regional Administrator.

Q How long did you hold that position?

A Two years at one point and five years at another point. I had left the government at one point when Iwas the Associate Regional Administrator. I then came back to the government. I held that Associate Regional Administrator's job in two different periods.

Q Were you the Associate Regional Administrator in 1969 and 1970?

A I don't think so. I was special counsel.

Q Special counsel to the SEC?

A Yes.

Q But you were an SEC employee here in the New York office?

A Yes.

Q I take it you are intimately familiar with the SEC's relationship with the New York Stock Exchange and the New York Stock Exchange relationship with member firms?

A Generally speaking, yes. I wouldn't say infinitely familiar but I know the relationship, yes.

Q Is it fair to say -- and let me go back -- that you are familiar with a book called The Wall Street Security Risk By Hurd Baruch, a former special counsel to the Division of Trading and Markets of the United States Securities and Exchange Commission?

A Yes, sir.

Q You have read the book?

A No, sir.

Q But you are familiar with its contents?

A Yes, sir.

Q In this book Mr. Baruch discusses the situation relating to member firm failures which existed in 1969 and in 1970 and the response of the New York Stock Exchange to that particular crisis. You are familiar with that?

A Generally speaking, yes, but I have not read the book.

Q You are familiar with the situation which existed?

A Yes.

Q And you know that the New York Stock Exchange set up a special trust fund to reimburse customers of failed or merged member firms?

A Yes, I am.

Q You know the payments out of that trust fund are estimated to have exceeded $100,000,000?

A That is correct.

Q And it was the crisis which existed in Wall Street in 1970 and this huge commitment of the brokerage community to the assistance of failed firms which ultimately led to the passage of the SIPC legislation, is that correct?

A That among other things. I would say that is substantially correct, yes, sir.

Q Mr. Moran, am I correct in my assumption that the SEC was, as a general matter, dissatisfied with the kind of surveillance that the New York Stock Exchange had given to member firm capital compliance in the 1969-1970 period?

A I am not prepared to testify with respect to the Commission's attitude with respect to satisfaction or

non-satisfaction with the overall surveillance.

Q In any event, following that period did it come to pass that the Stock Exchange and the SEC worked out different surveillance procedures?

A I honestly don't have any independent recollection. If you have something to refresh my memory I will be glad to try to be more precise.

Q Do you have some way, some general policy directive, from the SEC to the Department of Member Firms to keep yourself current on member firm capital compliance?

A Yes, sir, at the present time there is a system in existence.

Q Was that system in existence in 1973?

A Yes, sir, I think it was.

Q And in a general way the SEC either by express agreement with the Exchange or otherwise received reports from the New York Stock Exchange of member firm capital difficulties?

A That is correct.

Q What exactly is the policy and how is it implemented?

A It's done in several ways. If an unusual situation occurs, say, this afternoon and its called to the attention of the New York Stock Exchange, they might

very well call us and say, "We have received information along these lines which would suggest the ex-firm is having financial difficulties." The Exchange also gets out and sends to us, I believe on a weekly basis, a document entitled "The Early Warning List" and in that list there are a group of housed that may be experiencing non-profitability or the net capital ratios may be getting pretty close to the 10-to-1 ratio which suggests that if the non-profitability continues, they may be running into problems of going in excess of 10-to-1 which is one of the exchange standards for financial integrity and soundness.

Q And you say that that list is supplied to the SEC on a weekly basis?

A Yes, sir.

Q In your office?

A And Washington, D.C.

Q And you personally review those?

A I do, sir.

Q What action, if any, is indicated when a member firm appears on that warning list?

A Well, in most of the cases it's a situation that may develop in the future as distinguished from posing an instant problem. What I do after I have made a quick

review of them, I send them to the two Assistant Regional Administrators because in New York we have divided the brokerage community up from A to M for one Assistant and M to Z for the other Assistant and so the chap who has A to M reviews his group and he may even assign an attorney and say that this is a situation that might call for watching for the future and maybe you ought to check the files we have in the office or we can get up in case we have to take quick, affirmative action.

Q Is it fair to say that the primary job of keeping track of member firm compliance with the bookkeeping and reporting requirements of the SEC, as set forth in the Section 17(a) of the 1934 Act and the rules and regulations of the Commission, in the first instance devolves upon the New York Stock Exchange Department of Member Firms?

A Yes, sir, that is correct. They are a self-regulatory body.

Q Yes. What does that mean in the context of the securities?

A It means that in the framework of the legislation the Exchanges and the NASD, for example, the National Association of Securities and Dealers, have obligations placed upon them by the Congress of self-disclipining and regulating their own members. Both of these organizations

as well as the other exchanges throughout the country have employees and others who are supposed to do this work.

Q And to report to the SEC in the event they find any net capital violations or any serious bookkeeping miscalculations?

A That is correct, sir.

am

Q That is a statutory duty imposed upon them by the Congress?

A That is correct.

Q In the event that the New York Stock Exchange failed to police itself properly in this fashion the SEC has the right under the statute to suspend the membership from continuing to function or rather the Exchange from continuing to function?

A I don't remember the precise statutory language but we do have remedial sanctions we can take to correct the situation, correct.

Q Do you remember, Mr. Moran, when the Weis Securities problem was first called to your attention?

A My best recollection would be the latter part of April of 1973.

Q How did that come about? Did they appear on this early warning list for the first time then?

A I have no independent recollection of that at the moment. If I had the early warning list in front of me I could answer your question more precisely. I don't know whether I received a phone call or one of my assistant regional administrators received a phone call from the Exchange indicating that the Weis organization may be having some problems.

Q Did you assign one of the assistant regional administrators to the task of overseeing the Weis Securities situation?

A Yes, sir, Mr.William Nortman.

Q That is because he handled the M to S?

A Yes.

Q There came a time after this first advice to you at the end of April of 1973 that you personally were made aware of the fact that there were serious and possibly criminal violations in the way that the Weis books and recofds had been kept?

A Yes, sir.

Q When did that first occur?

A Some time in the early part of May. I don't remember the precise date, May 12, 13th or thereabouts.

Q How did you learn of this?

A My best recollection now -- do you have any memorandums?

Q Yes.

A My best recollection is that an attorney by the name of Milton Gould appeared in my office with a chap named Arthur Goldman who was formerly an employee of the SEC and who was internal general counsel or something for the Weis organization and they related a series of their

findings to us that afternoon.

May I look at this, sir?

Q Yes.

A Yes, this is a document where I can see my handwriting or my insertions here. That would be May 14th, the draft says here. This does refresh my recollection that Mr. Goldman came in to see us.

Q Apparently the revelations that Mr. Gould made to you at that time were sufficiently serious and alerted the Commission to possible criminal violations so that you immediately considered the possibility of heaving a grand jury convened and instituting a criminal investigation, is that correct?

A No, I wouldn't put it quite in that order. I would put it in the order that a serious situation like this suggested that we should pay close attention to all of the remedial sanctions that Congress gave us, namely an administrative action if that were appropriate or an injunction suit where you would stop the violations from continuing and if serious enough, recommending an action to the Department of Justice and the United States Attorney's office.

Q That was one of the things that was mentioned in the memorandum that you have before you as an option

that you had under serious consideration as early as May 14th?

MR. PUTZEL: You might give him the May 15th memorandum.

There is a reference in one of the memoranda which I have provided Mr. Kramer to a possible convening of a federal grand jury. I think it is in the May 15th memorandum. I will be happy to point it out.

Page 4, is this your handwriting?

THE WITNESS: Yes, sir. What you say is correct.

On Page 4, I say --

Q Excuse me just a second.

I don't think we have identified that memorandum or the author of that memorandum. I take it you are prepared to assume responsibility for it now?

A Yes, although I don't see my name on the bottom of it, it would look as though I wrote this. Certainly the corrections in here are my handwriting. That is definite. It sounds like me.

Q Fine,

Please go ahead.

A This is a document of May 15, 1973 "I," meaning Moran, " reported the substance of the Gould

meeting to Herb Pollack, he being the head of the Enforcement Department in Washington, D.C. and Barney Woodside, the chairman of S.I.P.C. at the time. My own thoughts in the matter are that if these violations are as serious as would appear on the surface we should be thinking of having a grand jury investigate into this matter and Herb Pollack agreed with this approach. Accordingly -- and I had this stricken out -- after we get somewhat further into this picture and he was to get more definitive facts concerned with falsification and the people involved we should call the U.S. Attorney's office and advise them of what we have and the need for a grand jury approach."

I don't know where these other things I have written here fit in there.

Q That is sufficient, thank you, Mr. Moran.

At the time that the indictments were returned in the Weis Securities matter, the indictment in July of 1973, it was reported in the newspapers that this was the first time that there had been criminal charges by the government against any member firm officers in connection with the keeping of false books and records, do you recall that?

A I don't, sir.

A Is that the fact?

A I am not so sure I can answer the question because I am sure that this was not the first criminal case involving a brokerage firm where there were false books and records. It may be the first case of a firm the size of Weis or the importance of Weis.

Q Are you aware, Mr. Moran, in the course of your vast experience at the SEC, can you name another criminal case which as brought against a New York Stock Exchange member firm for violations of Section of 17A of the Exchange Act of 1934, the false record keeping?

MR. PUTZEL: Objection.

THE COURT: Sustained.

MR.KRAMER: Your Honor, if I may just indicate to you, I think this is important. It goes to the question of whether or not Mr. Solomon at the time that he was called to testify before the department for member firms had any reason to believe that there was a criminal case in the background?

MR. PUTZEL: Your Honor, I don't think that that can conceivably be relevant.

THE COURT: Mr. Kramer, I don't see the relevance of that at all. I think that the issue of whether or not he was aware of it or had reason to believe that the

over accrued to increase net income and net capital and indicated that Joel Kubie made these entries. Mr. Lynn also stated for the audit in 1972, Mr. Kubie made unauthorized adjustments to the auditors work papers to increase the prices of securities carried in the firm's investment accounts. Specific dollar amounts are set forth in the transcript for some of the foregoing items.

By the end of December 1972, it appears that Weis Securities had sustained losses totaling over $5,000,000 (for the 7 months starting June 1972) of which fiscal year to date losses of only a little over $9,000 had been reported to the Exchange. Mr. Lynn indicates that not only were the false P and L statements being given to management and incorrect figures being given to the New York Stock Exchange but that incorrect figures were also being shown to prospective investors. Mr. Lynn has indicated that one of the reasons for the continuation of this practice was that the firm was attempting to bring about the take-over of Hentz & Co. and Leit wanted the best possible financial statements to show Hentz. Mr. Lynn stated that from mid 1972 on, Arthur Levine also took part in the discussions as to how to misrepresent the firm's profit and loss. Lynn also discussed two entries that took place in February and March 1973, the first for $1.5M and the second for $2M which had the effect of incorrectly reducing bank loans payable and increasing profits. Mr. Lynn stated that he, as on past occasions, physically put these entries through the firm's books and records on the direct orders of Mr. Sol Leit, Arthur Levine, Joel Kubie and another member who joined the group, Alan Solomon.

Lynn stated another method of increasing earnings was for Sol Leit to engage in a practice of selling securities through the 05 error account without any recording of the cost liability created by these sales. He also stated that numerous liabilities and expenses were not being booked by the firm which also has effect on net capital and income.

It appears from Mr. Lynn's testimony that Mr. Joel Kubie was not altogether candid with the Exchange when he appeared here on May 10 and May 11. Mr. Lynn also indicated that in redeeming Mr. Kubie's stock in Weis Securities, he was paid a total of approximately $87,000 for his shares which had a book value of approximately $37,000 and that at the time he also had an indebtedness to the firm of approximately $10,000. The testimony of this interrogation will be ready tomorrow morning.

CC: Robert M. Bishop Fred Stock Stuart K. Nelson
William Shields

NEW YORK STOCK EXCHANGE, INC.

DEPARTMENT OF ENFORCEMENT

MEMORANDUM

SUBJECT: CHARGES AGAINST SOL LEIT, ALLIED MEMBER AND PRESIDENT OF WEIS SECURITIES, INC.

BACKGROUND OF SOL LEIT

1. Sol Leit is 45 years old and married. In January, 1948, he graduated from New York University with a business degree. After several positions in non-securities related fields, Mr. Leit joined Rittmaster, Adelberg & Co., a predecessor firm to Weis Securities, Inc. (hereinafter "WSI"), as a registered representative in August, 1960. He has continued to be employed by WSI and its predecessor firms to date, becoming an Allied Member of the New York Stock Exchange in October, 1962. Until May, 1973, he had been WSI's President and Chief Operating Officer.

BACKGROUND OF THE FIRM

2. On June 18, 1965, Weis, Voisin & Cannon, Inc. became a member corporation. WSI has been doing business under its present name since April 9, 1973. WSI's business is composed of approximately 75% retail activity and 25% investment banking activity by dollar volume. WSI carries over 43,000 customer accounts. On May 30, 1973, a SIPC trustee was appointed to liquidate WSI due to severe capital and bookkeeping deficiencies.

STATEMENT OF FACTS AND EXPLANATION

3. On April 12, 1973, Sol Leit and Arthur Levine, the Chairman of the Board of WSI, informed the Exchange that there may have been certain bookkeeping inadequacies which may have resulted in the understatement of WSI's losses by as much as $2.5 million over the past several months. Upon being furnished with this information, the Exchange, as well as WSI's auditor, Touche, Ross & Co., who were likewise advised of the "problem", conducted a joint investigation in order to discover if there were any irregularities contained in the books and records of WSI.

4. As President and Chief Operating Officer of WSI, Mr. Leit's responsibilities included supervision and review of all operations and financial aspects of WSI. In this regard, he was required to attest to the accuracy of the Joint Regulatory Report (hereinafter "JRR") and was required to review and approve similar documents predating the JRR. During the periods applicable herein, these financial reports were prepared under the supervision of Robert K. Lynn, accounting department supervisor, and submitted to Mr. Joel Kubie, WSI's comptroller, prior to being forwarded to Mr. Leit.

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5. Exchange investigation has disclosed that, as a result of false bookkeeping entries and intentional improper calculations and accruals, the figures reported by WSI on the JRR bore little relation to its true financial condition. 1/

6. Improper adjustments effecting the financial condition of the firm were accomplished primarily through altering the firm's P & L figures. The figures representing estimated actual loss were obtained from schedules prepared periodically by Mr. Lynn for

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1/ See Exhibits A-C, Schedules prepared by Robert K. Lynn for the periods: May, 1972; June, 1972 through January, 1973; and June, 1972 through February, 1973, respectively. These schedules may contain items predating June, 1972 in that they represent a running balance of false or improper entries or adjustments during the entire period such proceedures were performed.

internal use at WSI to determine its actual financial condition. The schedules compare the treatment of particular items by WSI for financial reporting purposes and the effect on P & L if the actual estimated amounts of various income and expenses, as well as other improper adjustments, were reported. A comparison of reported to estimated P & L follows: 2/

Period	Reported Loss	Estimated Actual Loss
June, 1972 through January, 1973	$1,174,784	$6,089,332
February, 1973	306,183	870,233

7. Mr. Leit caused and/or allowed materially inaccurate books and records to be kept, improper accruals and adjustments to be made and assets to be improperly valued. False financial statements, drawn from these materially inaccurate books and records, were used to induce current subordinated lenders to extend subordination agreements, obtain new capital and enhance merger possibilities.

8. Examples of improper adjustments of the P & L and assets and false entries reflected on the books of account made with the knowledge or assistance of Mr. Leit follow:

A. Journal entries were posted to the books of account indicating reductions of bank loans without actually accomplishing these reductions. This procedure was used twice,

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2/ See Exhibits D-L, Executive Summaries of Joint Regulatory Reports filed by Weis Securities, Inc. for the periods: June-December, 1972, January-February, 1973 respectively. See Exhibits B. and C.

once on February 6, 1973 for $1.5 million and once on March 22 - 28, 1973 for a total of $2 million; the off-setting entries were used to reduce expenses or increase income. 3/ The $1.5 million entry was reversed on March 21. The $2 million entries were still on the books when Exchange Examiners entered the firm on April 13, 1973. Copies of the journal entries creating the false financial positions were destroyed after they had been booked.

B. Securities were sold short out of a P & L error account referred to as an "05 error account" without reflecting the "short" position liability on the firm's books. A false entry was effected on the books to accomplish this by transferring these securities from a "transfer" location to the "05 error account" on a free basis. 4/ For March, this amount was approximately $258,347.

C. Accrued expenses, including accrued rent in the amount of $777,000, were not reflected on the books nor were adjustments made to reflect this expense thereby artificially reducing expenses and aggregate indebtedness by this amount. 5/

3/See Exhibit M, Analysis of accounts reflecting the $1.5 million entry. See Exhibit N, Analysis of accounts reflecting the $2 million entries. The false reduction of bank loans in this instance was made in four segments on March 22, 26, 27 and 28. See also Exhibit O, a copy of journal entries made on March 26, 1973 for $600,000.

4/See Exhibit C, at page 1, lines 9-13.

5/See Exhibit C, at page 3, line 6. See also Exhibit P, Settlement Agreement.

D. Five day commission income on transactions effected but not yet settled was improperly overstated and no amounts were accrued to reflect amounts due to registered representatives. 6/

E. Firm proprietary positions were improperly valued and securities were purchased with the intent to misstate their value.

9. Mr. Leit had directed employees of WSI to engage in the improper conduct discussed above since mid-1972. This conduct resulted in an improper reduction of expenses and an improper increase in income and asset values. As a result of the misrepresentation of the P & L and asset figures of WSI, the net capital was overstated and the ratio of Aggregate Indebtedness to Net Capital was understated. In March, 1973, WSI reported a ratio of 1174%. 7/ Exchange Examiners, after adjusting for improperly reported items, found WSI's ratio for March 30, 1973, to be at least 3001% which was far in excess of Exchange Rule 325's maximum allowable ratio of 1500%. 8/

10. Mr. Leit also caused WSI to falsely compute the Reserve Requirements of Rule 15C-3-3. In this regard, he instructed Mr. Lynn to insert on the credit side of the formula a false figure for $2,048,789 described as "27-Neuberger credits" in the calculations as of May 4, 1973. 9/

6/ See Exhibit C , page 1, line 5-6.

7/ See Exhibit Q , Executive Summary of Joint Regulatory Report filed by Weis Securities, Inc. for the period March, 1973.

8/ See Exhibit R , Adjusted net capital computation for Weis Securities, Inc. for March, 1973, computed by Exchange Examiners.

9/ See Exhibit S , Worksheet for Rule 15C-3-3 computation as of May 4, 1973.

11. In connection with the Exchange's investigation, attempts were made to contact Mr. Leit on numerous occasions during mid-May, 1973, to obtain information. In this regard, a letter, dated May 16, 1973, was sent to Mr. Leit and his counsel requesting that he appear to testify. 10/ Receipt of this letter by Mr. Leit was acknowledged by his counsel. On May 22, 1973, Mr. Leit appeared at the Exchange with his counsel and he refused to testify and cooperate with the Exchange investigation into his activities at WSI until the identity of all persons making allegations of wrongdoing on the part of Mr. Leit have been disclosed and an opportunity to review the specific allegations would be afforded. 11/

10/ See Exhibit T, Copy of letter to Sol Leit, dated May 16, 1973.
11/ See Exhibit U, Excerpt of Transcript of Testimony of Sol Leit, dated May 22, 1973.

CHARGE I

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by causing and/or allowing his member firm employer to violate Exchange Rule 440.20 by maintaining and causing to be maintained materially false and misleading books and records, and is, therefore, subject to discipline pursuant to Article XIV, Sections 1 and 6 of the Constitution of the New York Stock Exchange, Inc.

CHARGE II

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by causing and/or allowing his member firm employer to prepare and submit false financial reports to the New York Stock Exchange, Inc. and is, therefore, subject to discipline pursuant to Article XIV, Sections 5 and 6 of the Constitution of the New York Stock Exchange, Inc.

CHARGE III

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by willfully causing his member firm employer to violate Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 promulgated thereunder and is, therefore, subject to discipline pursuant to Article XIV, Sections 6 and 7 of the Constitution of the New York Stock Exchange, Inc.

CHARGE IV

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by causing and/or allowing his member firm employer to compute net capital in violation of Exchange Rule 325 and is, therefore, subject to discipline pursuant to Article XIV, Section 6 of the Constitution of the New York Stock Exchange, Inc.

CHARGE V

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by causing and/or allowing his member firm employer to use false financial statements in connection with obtaining extensions of existing subordination agreements and/or obtaining new subordination agreements and/or enhancing merger possibilities and is, therefore, subject to discipline pursuant to Article XIV, Section 6 of the Constitution of the New York Stock Exchange, Inc.

CHARGE VI

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in conduct inconsistent with just and equitable principles of trade by willfully causing his member firm employer to violate Section 15(c) of the Securities Exchange Act of 1934 and Rule 15C-3-3 promulgated thereunder and is, therefore, subject to discipline pursuant to Article XIV, Sections 6 and 7 of the Constitution of the New York Stock Exchange, Inc.

CHARGE VII

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, failed to testify in connection with an Exchange investigation and is, therefore, subject to discipline pursuant to Article XIV, Section 9 of the Constitution of the New York Stock Exchange, Inc.

CHARGE VIII

Sol Leit, by reason of the facts set forth in the Statement of Facts and Explanation and the Exhibits referred to therein, engaged in acts and a course of conduct resulting in a fraud upon the New York Stock Exchange, Inc. and/or capital contributors of Weis Securities, Inc. and/or customers of Weis Securities, Inc. and/or creditors of Weis Securities, Inc. and is, therefore, subject to discipline pursuant to Article XIV, Section 1 of the Constitution of the New York Stock Exchange, Inc.

4/4/73
Date

Stuart K. Nelson
Assistant Vice President

	Division	Date
Prepared By		
Approved By		

Work ... Division of C_T, Inc.

P&L ... Items ... Pro forma

5-26-78

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Wm. Vorse & Co. Inc.
Accounts P. L.
a/c 1-26-13

16

	Interest	Principal
Balance for Trial Balance 1-26-13		
Adjustments - allocations:		
S. Dal Consumers Coal	416.31	
Expense on S Dal Consumers		152.10
Positions - of Coal Accounts - out	67.36	
" - Storage Accounts	192.28	
Consumers - not from others now	136.47	
Trading Profit - January	181.00	
Interest Income on Customer Accounts	166.00	
Discount - Sundry Purchases	2.26	
Premiums Received from other Accts.	94.40	
Int from the Second Bank	192.00	
Int Income - Bal	12.00	
Prem Pur - Int	5.00	
Subscriptions		
Advertising	63.27	
Post Page	41.01	
Taxes - Bonds	51.29	
Stationery	16.39	
Office Mgt.	5.00	
Taxes Mot. & Accounts	18.98	
Coal in Transit - Cross out of	60.00	
Int. Bonds	213.67	
Bank Difference 1/31/13 Wages	26.15	
Plant Removal January		3.89
Customer Stock Pur		67.00
Excess Commerce Commercial		35.15
Commerce - Bal - Accounts		256.92
Commerce Income on stock Accounts		41.30
Sick		1.00
Common Stock Bank Co.		32.62
Interest on Customer Loans		4.00
Brokerage Commercial Pur		2.00
Interest to Subscribers Loans		3.17
Bank Payments		31.00
Bank Charges		55.00
Stock Loan Contracts - Special		17.00
Adjustments		17.00
		5.00
to Page 3	2536.96	1625.72

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Weil, Voiric & Co. Inc.
Abbeville P.L.
A/o 1-31-73

26

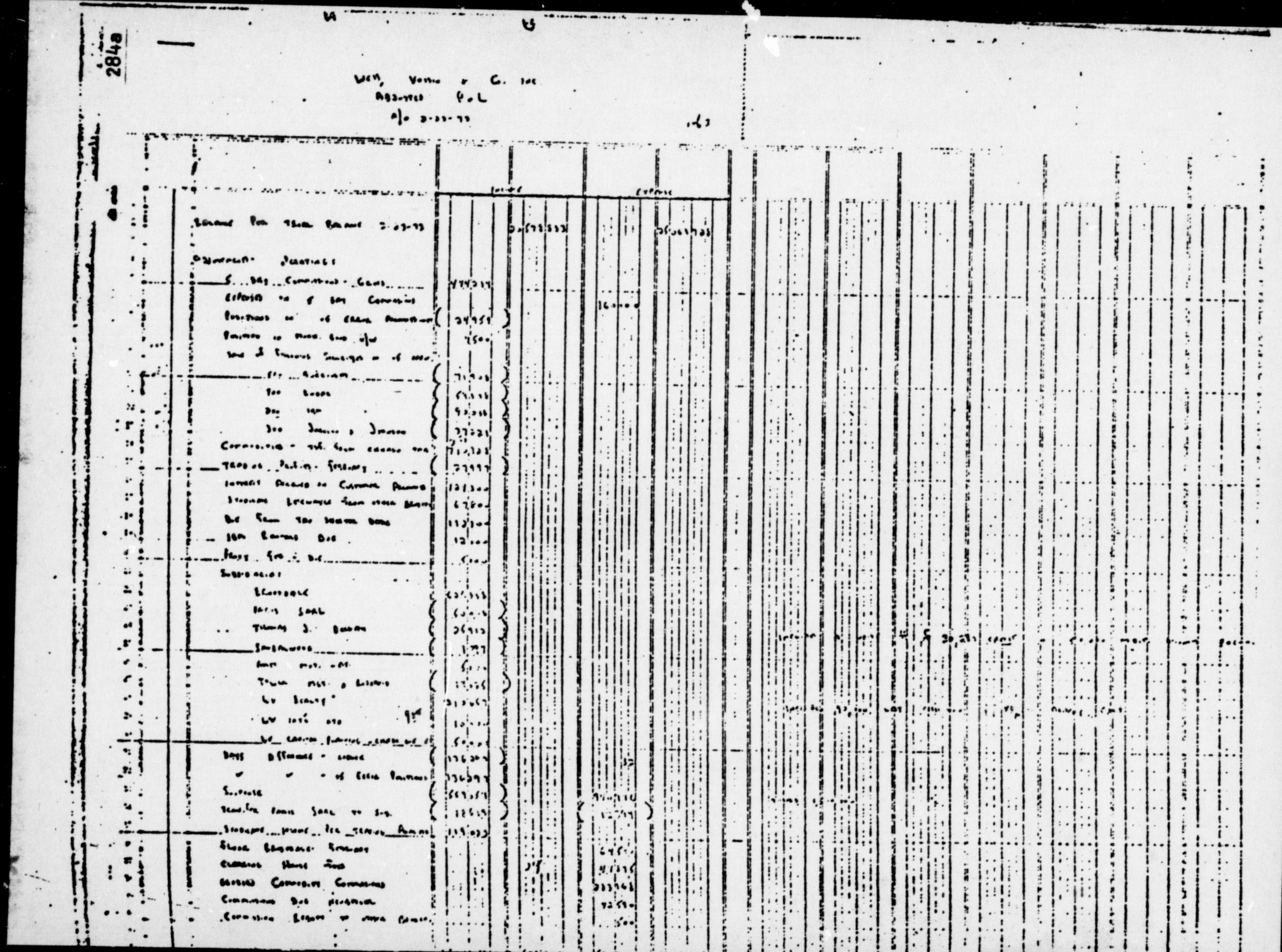
	Income	Expense
Taxable Income from Page 1		
Additional Income (Loss):		
Rent		
Royalties		
Dividends		
Interest		
Net short-term capital gain		
Net long-term capital gain		
Fiduciary adjustment		
Other		
Total		
Salaries and wages		
Repairs		
Bad debts		
Rent on business property		
Taxes		
Interest		
Depreciation (attach Form 4562)		
Depletion		
Advertising		
Pension, profit-sharing, etc., plans		
Employee benefit programs		
Energy conservation measures		
Other deductions (attach schedule)		
Total deductions		
Ordinary income (loss) from trade or business activities. Subtract total deductions from total income		
Additional Taxes:		
Recapture of investment credit (attach Form 4255)		
Recapture of low-income housing credit (attach Form 8611)		
Interest due under the look-back method—completed long-term contracts (attach Form 8697)		
Interest due under the look-back method—income forecast method (attach Form 8866)		
Alternative minimum tax (attach Form 6251)		
Other taxes		
Total additional taxes		
Net gain (loss) under section 1231 (other than due to casualty or theft)		
Other income (loss)		
Section 179 expense deduction (attach Form 4562)		
Other deductions		
Total balance (lines 1 through 3 minus lines 4 through 6)		

284a

Wm, Vonno & C. Inc

A83-1761 P.O.L

a/o 3-23-77



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Wm. Vassie & Co. Inc.

ABSATEC P.L.

A/o 2-23-73

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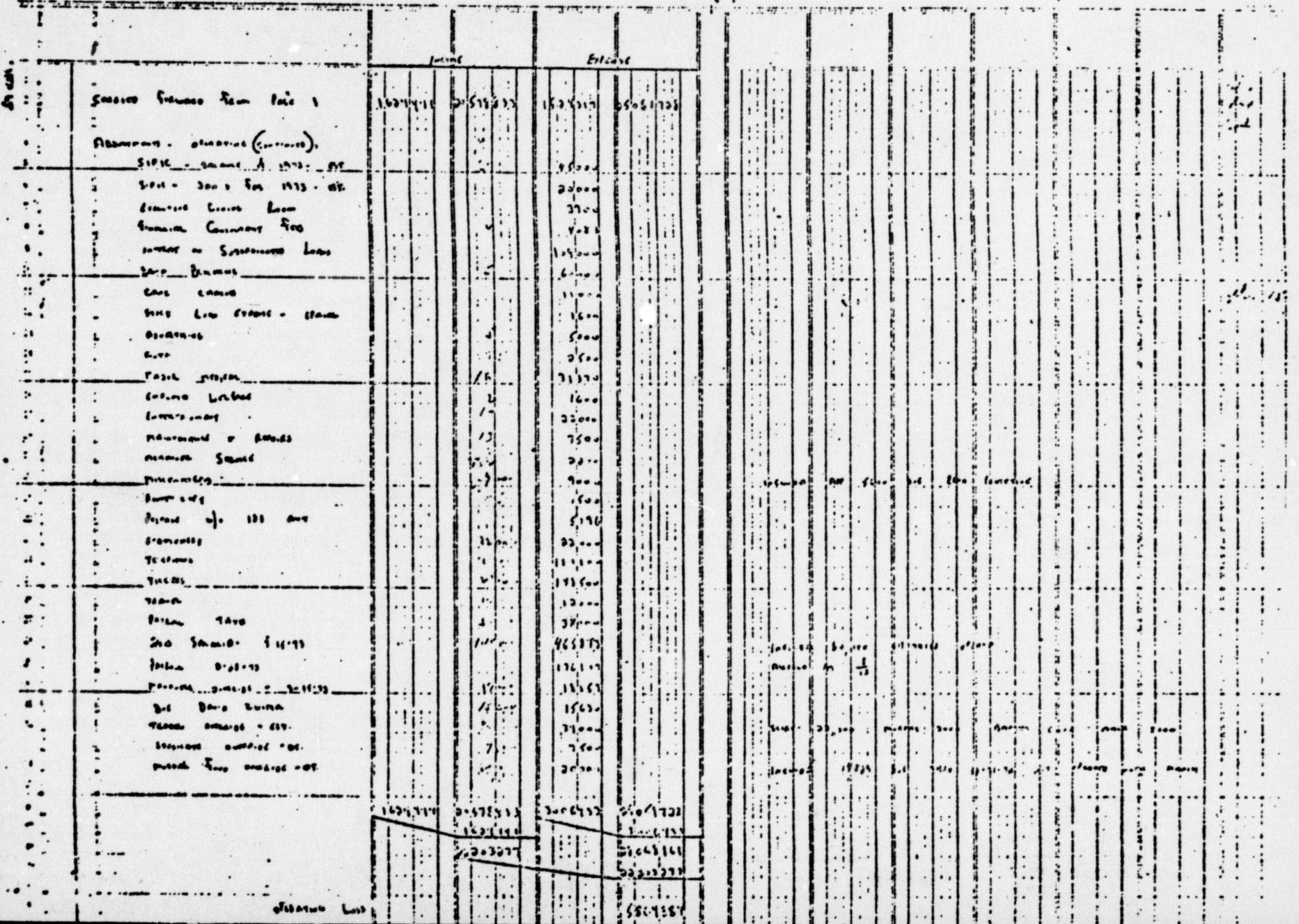

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Lehman, Vance & Co. Inc
Northern Pole
a/o 3-31-73

3/62

Income | Expense

Allocated Costs Expensed

Advertising - direct:
Field - Samples, Etc.
Less - Co-op Dues
Insured Coop Ads - Net
Contributions
Other

Less direct warehouse & Adv Admin

Adv Admin:
Financial Communications Press Releases
Less Form - Direct
Deferred Charges Cost Reductions
" " - Net Income
Goodwill - Re Eaton Sale at Beginning
Charges

Less direct warehouse & Adv Admin
Less Int Expenses Pole

Warehouse

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JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm		ITEM
Weis, Voisin & Co., Inc.	M955815 0672	199
This Report covers the period from (MM/DD/YY)	05 21 72	103
to (MM/DD/YY)	06 30 72	106
Number of trade days covered in this Report	24	108

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)		
Net capital (from item 730)	$ 9,243,232	110
Aggregate indebtedness (from item 800)	$ 82,607,971	120
Ratio of aggregate indebtedness to net capital	% 894%	130
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 3,736,034	140
Net capital in excess of 8-1/3% of aggregate indebtedness (@ 1200%)*	$ 2,359,235	150
Net capital in excess of 10% of aggregate indebtedness (@ 1000%)*	$ 982,435	160
Business expansion/reduction ratio (item 800 divided by item 750; See NYSE Rule 326, ASE Rule 471)	% 957	170
KEY FINANCIAL DATA		
Fails to deliver — 30 days and over	$ 178,271	180
Fails to receive — 30 days and over	127,720	190
Total market value of actual and contractual proprietary security commitments, including capital demand notes — required collateral (See Instruction, Part III B)		
Long exempt securities	4,011,846	200
Long non-exempt securities	13,534,464	210
Short exempt securities		220
Short non-exempt securities	376,894	230
Actual operational charges to capital (See Instruction, Part III B)	709,577	240
Potential operational charges to capital (from item 2120)		250
Other potential exposure and risk of capital items (from item 2270)	2,147,105	260
UNCONSOLIDATED INCOME (FROM SCHEDULE 24) (See Instruction, Part III B)		
Security commission income (from lines 1 through 5)	$ 2,198,366	270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	64,808	280
Commodity income (from line 16)	46,326	290
Profit or (loss) from underwriting and selling groups (from line 9)	495,759	300
Mutual fund income (from lines 10 & 11)	232,124	310
Interest income on customer accounts (from line 12)	431,693	320
Other income unrelated to the securities business (from line 18)	35,015	330
Other income (subtract income items above from Gross Income)	4,910	340
Gross income (from line 19)	3,509,001	350
Total expenses (from line 40)	3,495,670	360
Net income before taxes for the month (from line 41)	13,331	370
Net income after taxes (from line 43)	13,331	380
Total 1 (All lines 180 through 380)	31,626,211	390

*Use minimum dollar capital requirement if greater

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm Weis, Voisin & Co., Inc. N 9 5 5 8 5 2 7 7 2 [001]

This Report covers the period from (MM/DD/YY) 0 7 0 1 7 2 [003]
to (MM/DD/YY) 0 7 2 9 7 2 [004]
Number of trade days covered in this Report 19 [005]

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)

Net capital (from item 730)	$ 9,358,992	[110]
Aggregate indebtedness (from item 800)	$ 78,438,239	[120]
Ratio of aggregate indebtedness to net capital	% 838	[130]
Net capital in excess of 6-2/3% of aggregate indebtedness (= 1500%)*	$ 4,129,682	[140]
Net capital in excess of 8-1/3% of aggregate indebtedness (= 1200%)*	$ 2,822,373	[150]
Net capital in excess of 10% of aggregate indebtedness (= 1000%)*	$ 1,515,074	[155]
Business expansion/reduction ratio (Item 800 divided by Item 750; See NYSE Rule 326, ASE Rule 471)	% 976	[170]

KEY FINANCIAL DATA

Fails to deliver — 30 days and over	$ 95,639	[180]
Fails to receive — 30 days and over	217,930	[190]
Total market value of actual and contractual proprietary security commitments, including capital demand notes — required collateral (See Instruction, Part III B)		
Long exempt securities	4,218,479	[200]
Long non-exempt securities	9,607,424	[210]
Short exempt securities		[220]
Short non-exempt securities	813,076	[230]
Actual operational charges to capital (See Instruction, Part III B)	650,531	[240]
Potential operational charges to capital (from item 2120)		[250]
Other potential exposure and risk of capital items (from item 2270)	1,820,862	[260]

CONSOLIDATED INCOME (FROM SCHEDULE 24) (See Instruction, Part III B)

Security commission income (from lines 1 through 5)	$ 1,231,106	[270]
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	60,776	[280]
Commodity income (from line 16)	48,362	[290]
Profit or (loss) from underwriting and selling groups (from line 9)	314,831	[300]
Mutual fund income (from lines 10 & 11)	146,528	[310]
Interest income on customer accounts (from line 12)	521,774	[320]
Other income related to the securities business (from line 18)	50,759	[330]
Other income (subtract income items above from Gross Income)	32,420	[340]
Gross income (from line 19)	2,418,556	[350]
Total expenses (from line 40)	2,869,003	[360]
Net income before taxes for the month (from line 41)	(450,447)	[370]
Net income after taxes (from line 43)	(225,000)	[380]
Total 1 (Add lines 180 through 380)	24,454,609	[390]

*Use minimum dollar capital requirement if greater

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm: Weis, Voisin & Co., Inc. — M9 5585 9872 [001] [002]

This Report covers the period from (MM/DD/YY)	07 29 72	[003]
to (MM/DD/YY)	08 25 72	[005]
Number of trade days covered in this Report	20	[007]

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)

Net capital (from item 730)	$ 9,443,883	[110]
Aggregate indebtedness (from item 800)	$ 79,778,336	[120]
Ratio of aggregate indebtedness to net capital	% 845	[130]
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 4,125,333	[140]
Net capital in excess of 8-1/3% of aggregate indebtedness (@ 1200%)*	$ 2,795,693	[150]
Net capital in excess of 10% of aggregate indebtedness (@ 1000%)*	$ 1,466,055	[160]
Business expansion/reduction ratio (item 800 divided by item 750; See NYSE Rule 326, ASE Rule 471)	% 947	[170]

KEY FINANCIAL DATA

Fails to deliver -- 30 days and over	$ 85,055	[180]
Fails to receive -- 30 days and over	151,530	[190]
Total market value of actual and contractual proprietary security commitments, including capital demand notes -- required collateral (See Instruction, Part III B)		
Long exempt securities	5,147,427	[200]
Long non-exempt securities	9,310,549	[210]
Short exempt securities	-0-	[220]
Short non-exempt securities	588,461	[230]
Actual operational charges to capital (See Instruction, Part III B)	592,123	[240]
Potential operational charges to capital (from item 2120)	- 0 -	[250]
Other potential exposure and risk of capital items (from item 2270)	1,964,960	[260]

UNCONSOLIDATED INCOME (FROM SCHEDULE 2A) (See Instruction, Part III B)

Security commissions income (from lines 1 through 5)	$ 1,586,568	[270]
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	143,875	[280]
Commodity income (from line 16)	41,269	[290]
Profit or (loss) from underwriting and selling groups (from line 9)	153,810	[300]
Mutual fund income (from lines 10 & 11)	569	[310]
Interest income on customer accounts (from line 12)	436,412	[320]
Other income related to the securities business (from line 18)	93,200	[330]
Other income (subtract income items above from Gross Income)	7,964	[340]
Gross income (from line 19)	2,463,747	[350]
Total expenses (from line 39)	2,539,186	[360]
Net income before taxes for the month (from line 41)	(75,439)	[370]
Net income after taxes (from line 43)	(38,439)	[380]
Total 1 (Add lines 1a1 through 380)	25,102,907	[390]

*Use minimum dollar capital requirement if greater

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION 290a

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm Weis, Voisin & Co., Inc. M955585 0917 2 ITEM 100

This Report covers the period from (MM/DD/YY) 01 8 21 6 71 2 103
to (MM/DD/YY) 01 9 21 9 71 2 106
Number of trade days covered in this Report 24 108

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)

Net capital (from item 730)	$ 8,886,116	110
Aggregate indebtedness (from item 800)	$ 79,795,417	120
Ratio of aggregate indebtedness to net capital	% 898	130
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 3,566,422	140
Net capital in excess of 8-1/3% of aggregate indebtedness (@ 1200%)*	$ 2,236,198	150
Business expansion/reduction ratio (Item 800 divided by Item 750; See NYSE Rule 326, ASE Rule 471)	$ 906,575	160
	% 978	170

FINANCIAL DATA

Fails to deliver — 30 days and over	$ 99,908	180
Fails to receive — 30 days and over	204,758	190
Total market value of actual and contractual proprietary security commitments, including capital demand notes — required collateral (See Instruction, Part III B)		
Long exempt securities	5,417,541	200
Long non-exempt securities	9,567,923	210
Short exempt securities		220
Short non-exempt securities	487,110	230
Annual operational charges to capital (See Instruction, Part III B)	579,060	240
Potential operational charges to capital (from item 2120)		250
Other potential exposure and risk of capital items (from item 2270)	1,823,867	260

CONSOLIDATED INCOME (FROM SCHEDULE 24) (See Instruction, Part III B)

Security commission income (from lines 1 through 5)	$ 1,503,586	270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	248,200	280
Commodity income (from line 16)	82,172	290
Profit or (loss) from underwriting and selling groups (from line 9)	378,821	300
Mutual fund income (from lines 10 & 11)	29,855	310
Interest income on customer accounts (from line 12)	568,933	320
Income unrelated to the securities business (from line 18)	112,146	330
Subtract income items above from Gross income)	75,814	340
Other income (from line 19)	2,999,673	350
Total expenses (from line 29)	2,893,572	360
Income before taxes for the month (from line 41)	106,101	370
Income after taxes (from line 43)	56,101	380
Total 1 (Add lines 150 through 380)	27,255,287	390
Minimum dollar capital requirement if greater		400

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EXHIBIT G

JOINT REGULATORY REPORT OF BROKER DEALERS' FINANCIAL AND OPERATIONAL CONDITION

291a

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

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PART I

		ITEM
Firm	WEIS, VOISIN & CO., INC. N 9558-5 10 72	4000
This Report covers the period from (MM/DD/YY)	1 10 01 27 2	1001
to (MM/DD/YY)	1 10 27 17 2	1002
Number of trade days covered in this Report	19	1003

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)		
Net capital (from item 750)	$ 11,295,445	1100
Aggregate indebtedness (from item 800)	$ 81,427,233	1120
Ratio of aggregate indebtedness to net capital	% 721	1130
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 5,866,963	1140
Net capital in excess of 9-1/3% of aggregate indebtedness (@ 1200%)*	$ 4,509,843	1150
Net capital in excess of 10% of aggregate indebtedness (@ 1000%)*	$ 3,152,722	1160
Business expansion/reduction ratio (Item 800 divided by Item 750; See NYSE Rule 326, ASE Rule 471)	% 758	1170
FINANCIAL DATA		
Fails to deliver – 30 days and over	$ 104,686	1180
Fails to receive – 30 days and over	187,439	1190
Total market value of actual and contractual proprietary security commitments, including capital demand notes – required collateral (See Instruction, Part III B)		
Long exempt securities	3,919,775	2130
Long non-exempt securities	10,049,263	2140
Short exempt securities	-0-	2150
Short non-exempt securities	606,004	2160
Actual operational charges to capital (See Instruction, Part III B)	598,587	2200
Potential operational charges to capital (from item 2120)	-0-	2250
Other potential exposure and risk of capital items (from item 2270)	1,606,203	2260
CONSOLIDATED INCOME (FROM SCHEDULE 2) (See Instruction, Part III B)		
Security commission income (from lines 1 thru 5)	$ 1,065,739	2270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 2, 9, 13, 14 & 15)	152,800	2280
Commodity income (from line 16)	39,143	2290
Profit or (loss) from underwriting and selling groups (from line 9)	250,669	2300
Revenue from sale of investment company shares	30,519	2310
Dividend income on trading securities (from line 12)	500,603	2320
Other income (normal operations of the securities business (from line 18)	20,000	2330
Other income (unusual income items above from Gross income)	26,133	2340
Gross income (from line 20)	2,085,007	2350
Total expenses (from line 40)	2,359,027	2360
Net income before taxes for the month (item line 41)*	(274,020)	2370
Net income after taxes for the month	( )	2380
Total 1 (Add lines 100 through 2370)	23,192,052	2390

*If any material difference exists between net income and net capital, explain on page 2.

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION

292a

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm Weis, Voisin & Co., Inc. M955 8 1 1 72 — ITEM 120

This Report covers the period from (MM/DD/YY) 1 0 2 8 7 2 — 103
to (MM/DD/YY) 1 1 2 4 7 2 — 106
Number of trade days covered in this Report 18 — 109

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)

Net capital (from item 730)	$ 10,861,248	110
Aggregate indebtedness (from item 800)	$ 81,814,554	120
Ratio of aggregate indebtedness to net capital	% 753%	130
Net capital in excess of 6-2/3% of aggregate indebtedness (= 1500%)*	$ 5,406,945	140
Net capital in excess of 8-1/3% of aggregate indebtedness (= 1200%)*	$ 4,043,368	150
Net capital in excess of 10% of aggregate indebtedness (= 1000%)*	$ 2,679,793	160
Business expansion/reduction ratio (Item 800 divided by Item 750; See NYSE Rule 326, ASE Rule 471)	% 891 %	170

KEY FINANCIAL DATA

Fails to deliver — 30 days and over	$ 84,419	180
Fails to receive — 30 days and over	50,638	190
Total market value of actual and contractual proprietary security commitments, including capital demand notes — recurred collateral (See Instruction, Part III B)		
Long exempt securities	5,082,294	200
Long non-exempt securities	10,850,627	210
Short exempt securities		220
Short non-exempt securities	295,346	230
Actual operational charges to capital (See Instruction, Part III B)	469,130	240
Potential operational charges to capital (from item 2120)		250
Other potential exposure and risk of capital items (from item 2270)	3,626,000	260

CONSOLIDATED INCOME (FROM SCHEDULE 24) (See Instruction, Part III B)

Security commission income (from lines 1 through 5)	$ 1,105,792	270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	(232,560)	280
Commodity income (from line 16)	83,610	290
Profit or (loss) from underwriting and selling groups (from line 9)	1,091,676	300
Mutual fund income (from lines 10 & 11)	26,318	310
Interest income on customer accounts (from line 12)	483,565	320
Other income unrelated to the securities business (from line 18)	34,413	330
Other income (subtract income items above from Gross Income)	565,330	340
Gross income (from line 19)	3,158,141	350
Total expenses (from line 40)	2,886,639	360
Net income before taxes for the month (from line 41)	271,505	370
Net income after taxes (from line 43)	130,750	380
Total 1 (Add lines 180 through 380)	30,063,636	390
The minimum dollar capital requirement if greater		

1/72

EXHIBIT I

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION 293a

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

Firm Weis, Voisin & Co., Inc. N 9 5 5 8 5 1 2 7 2 — ITEM 001

This Report covers the period from (MM/DD/YY)	1 1 2 5 7 2	103
to (MM/DD/YY)	1 2 2 9 7 2	105
Number of trade days covered in this Report	23	103

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part III D)

Net capital (from Item 750)	$ 9,587,428	740
Aggregate indebtedness (from Item 800)	$ 78,993,854	770
Ratio of aggregate indebtedness to net capital	% 824	780
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 4,321,171	785
Net capital in excess of 8-1/3% of aggregate indebtedness (@ 1200%)*	$ 3,004,607	790
Net capital in excess of 10% of aggregate indebtedness (@ 1000%)*	$ 1,688,043	795
Business expansion/reduction ratio (Item 800 divided by Item 750; See NYSE Rule 326, ASE Rule 477)	% 957	175

KEY FINANCIAL DATA

Fails to deliver -- 30 days and over	$ 117,902	155
Fails to receive — 30 days and over	103,813	165
Total market value of actual and contractual proprietary security commitments, including capital demand notes — required collateral (See Instruction, Part III B)		
Long exempt securities	3,545,363	200
Long non-exempt securities	12,530,710	210
Short exempt securities		220
Short non-exempt securities	350,479	230
Actual operational charges to capital (See Instruction, Part III B)	503,560	240
Potential operational charges to capital (from Item 2120)		250
Other potential exposure and risk of capital items (from Item 2270)	2,200,087	260

UNCONSOLIDATED INCOME (From SCHEDULE 24) (See Instruction, Part III B)

Security commission income (from lines 1 through 5)	$ 1,690,464	270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	698,142	280
Commodity income (from line 16)	148,378	290
Profit or (loss) from underwriting and selling groups (from line 9)	(161,275)	300
Mutual fund income (from lines 10 & 11)	30,151	305
Interest income on customer accounts (from line 12)	507,825	310
Other income unrelated to the securities business (from line 18)	454,364	320
Other income (subtract income items above from Gross income)	284,993	330
Gross income (from line 19)	3,653,907	340
Total expenses (from line 40)	3,562,853	350
Net income before taxes for the month (from line 41)	90,054	360
Net income after taxes (from line 43)	45,027	370
Total I (Add lines 180 through 350)	30,355,662	380

*Use minimum dollar capital requirement if greater

JKR 1/72

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EXHIBIT J

JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION 294a

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

#4

PART I

The Weis, Voisin & Co., Inc. N955850173

This Report covers the period from (MM/DD/YY) 12 | 01 | 92
to (MM/DD/YY) 12 | 31 | 92
Number of trade days covered in this report 18

EXECUTIVE SUMMARY

Capital (See Instruction 1-Part III)
Net capital (from Item 3500) $ 8,999,534
Aggregate indebtedness (from Item 3790) $ 82,224,412
Ratio of aggregate indebtedness to net capital % 9.14
Net capital in excess of 6-2/3% of aggregate indebtedness (= 15804)* $ 3,515,
Net capital in excess of 8-1/3% of aggregate indebtedness (= 14700)* $ 3,344,
Net capital in excess of 10% of aggregate indebtedness (= 12807)* $ 772,
Debt-equity ratio (total liabilities divided by Item 3540; see NYSE Rule 326, ASE Rule 324) % (1,053

Securities in transit
Fails to receive - 30 days and over $ 180,
Fails to receive - 5 days and over 12,
Total market value of actual and contractual proprietary security commitments, including repos and reverse repos - required collateral (See Instruction, Part III B)
Long exempt securities 4,477,
Long non-exempt securities 1,70
Short exempt securities
Short non-exempt securities 82,
Aged fail-to-deliver charges to capital (See Instruction, Part III B) 598,
Aged fail-to-receive charges to capital (from Item 2150)
Other potential concentration and risk of capital items (from Item 2270) 1,720,

RECONCILIATION WITH COMPANY'S OWN SCHEDULE 30 (See Instruction, Part III B)
Security commission income (from Lines 1 through 5) $ 1,227,
Realized and unrealized gains and (losses) on trading & investment accounts (from Lines 7, 8, 13, 14 & 15) 340,
Commodity gains or (losses) (line 16)
Profit or (loss) from underwriting and selling groups (from line 9)
Margin interest income (from line 10 & 11)
Interest income on customer accounts (from line 12) 394,
Other income unrelated to the securities business (from line 18)
Other income (subtract if income items above from Gross income)
Gross income (from line 19) 2,407,
Total expenses (from line 30) 2,962,
Net income before taxes for the month (from line 41) (554,
Net income after taxes (from line 43) (277,
Total I (Add lines 1a through 15b) 26,

*Use minimum dollar net capital requirement if greater

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JOINT REGULATORY REPORT OF BROKER/DEALERS' FINANCIAL AND OPERATIONAL CONDITION

To: New York Stock Exchange, Inc.
American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

PART I

From: Weis, Voisin & Co., Inc.

		ITEM
This Report covers the period from (MM/DD/YY)	0 1 2 7 7 3	103
to (MM/DD/YY)	0 2 2 3 7 3	105
Number of trade days covered in this Report	19	109

EXECUTIVE SUMMARY

CAPITAL REQUIREMENTS (See Instruction 4—Part IIID)

Net capital (from item 730)	$ 8,882,582	110
Aggregate indebtedness (from item 800)	$ 74,245,092	120
Ratio of aggregate indebtedness to net capital	% 836	130
Net capital in excess of 6-2/3% of aggregate indebtedness (@ 1500%)*	$ 3,932,910	140
Net capital in excess of 8-1/3% of aggregate indebtedness (@ 1200%)*	$ 2,695,491	150
Net capital in excess of 10% of aggregate indebtedness (@ 1000%)*	$ 1,458,073	160
Business expansion/reduction ratio (item 800 divided by item 750; See NYSE Rule 326, ASE Rule 471)	% 900	170

KEY FINANCIAL DATA

Fails to deliver – 30 days and over	$ 96,064	180
Fails to receive – 30 days and over	169,969	190
Total market value of actual and contractual proprietary security commitments, including capital demand notes – required collateral (See Instruction, Part III B)		
Long exempt securities	4,566,726	200
Long non-exempt securities	9,083,008	210
Short exempt securities	990	220
Short non-exempt securities	298,053	230
Actual operational charges to capital (See Instruction, Part III B)	569,772	240
Potential operational charges to capital (from item 2120)		250
Other potential exposure and risk of capital items (from item 2270)	1,590,000	260

UNCONSOLIDATED INCOME (FROM SCHEDULE 21) (See Instruction, Part III B)

Security commission income (from lines 1 through 5)	$ 1,236,671	270
Realized and unrealized gains and (losses) on trading & investment accounts (from lines 7, 8, 13, 14 & 15)	211,836	280
Commodity income (from line 16)	163,200	290
Profit or (loss) from underwriting and selling groups (from line 9)	211,003	300
Mutual fund income (from lines 10 & 11)	55,625	310
Interest income on customer accounts (from line 12)	482,704	320
Other income (related to the securities business (from line 18)	133,847	330
Other income (subtract if income items above from Gross income)	117,628	340
Gross income (from line 19)	2,613,579	350
Total expenses (from line 40)	2,916,762	360
Net income before taxes for the month (from line 41)	(303,183)	370
Net income after taxes (from line 43)	(153,092)	380
Total 1 (Add lines 110 through 260)	24,050,227	390

*Use minimum dollar capital requirement if greater

SR 1/72

EXHIBIT Y

EXHIBIT M

Wm. Cramer

[illegible] SECURITIES INC.

SUSPENSE

ACCT	DESCRIPTION	3/22	3/26	3/27	3/28
0.0135	INT. ON CALL LOANS	[illegible]		55000 M	
0.0149	BANK CHARGES		10000 M		
0.0209	RENTS		50000 M		
0.0321	DEPRECIATION & AMORT.		30000 M		
0.0326	EMPLOYEE INSURANCE		3000 M		
0.0331	EMPLOYEE WELFARE		10000 M		
0.0366	MISC. EXP.		150000 M		
0.0376	PERSONNEL FEES		25000 M		
0.0398	BACK OFFICE SALARIES		30000 M		
0.0425	SALES SALARIES & COMM.		90000 M	380000 M	300000 M
0.0411	STATIONERY			20000 M	
0.0417	TELEPHONE			10000 M	
0.0456	TELEGRAMS & QUOTES			10000 M	
0.0461	TRAVEL			25000 M	
0.0211	COMMISSIONS NYSE	60000 M			150000 M
0.0225	" ASE	25000 M			100000 M
0.0236	" OTC	75000 M			50000 M
0.0274	" MISC.	15000 M			
0.0310	INCOME FROM SALE OF TAX COLLECTIONS	50000 M			
0.0514	INTEREST ON CUST. FUNDS	100000 M			
0.0913	TRADING PROFITS	75000 M	175000 M		
		400000	600000	500000	600000

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	O-CR X-CR	SECURITY NO.	A/C NUMBER	QUANTITY	CLASS	DEBIT	CREDIT
9	X		04-00119-1-3				15,000
9	X		04-00199-1-2				10,000
9	X		04-00200-1-8				50,000
9	X		04-00321-1-3				30,000
9	X		04-00326-1-7				30,000
9	X		04-00331-1-5				10,000
9	X		04-00366-1-8				15,000
9	X		04-00376-1-6				25,000
9	X		04-00398-1-0				30,000
9	X		04-00425-1-1				90,000
9							
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9							

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...ING A STOCK RECORD

C-DR XCR	SECURITY NO.	A/C NUMBER	QUANTITY	ENTRY	A DEBIT	B CREDIT	B DESCRIPTION (2 SPACES)
5		00-00027-2-5		3-8	100,000		

Reference is made to the various lease and modification agreements between One Estates, Inc. ("Landlord") and Scheinman, Hochstin & Trotta, Inc., duly assumed by Weis Voisin & Co., Inc. (now known as Weis Securities, Inc.) ("Tenant"), and leases between Landlord and Tenant, all as modified by agreement dated September 16, 1971.

Certain disputes have arisen between Landlord and Tenant respecting the amounts heretofore due to the Landlord and the parties wish to resolve those differences.

Accordingly, it is hereby agreed as follows:

1. Tenant hereby acknowledges an obligation to Landlord in the amount of $777,855.89, of which $749,897.62 represents rent and additional rent due under the lease through April 12, 1973 and $27,958.27 represents interest on the entire amount to the date hereof. Landlord agrees that this amount represents all sums payable or claimed to be payable under the lease through April 12, 1973 (but does not include any escalation charges for the year 1973). Tenant has no claims against Landlord.

2. Tenant hereby agrees to pay said obligation as follows: $300,000.00 upon the execution of this agreement (of which $27,958.27 shall be applied to interest and

EXHIBIT P

$362,041.73 shall first be applied to all escalation, electrical and miscellaneous charges paid in full to date and the balance shall be applied to the earliest rent hereby acknowledged to be due; $193,927.95 on May 17, 1973 (representing a portion of the next earliest balance of rent hereby acknowledged to be due); and $193,927.94 on June 17, 1973 (representing the balance of the rent hereby acknowledged to be due). Interest at the rate of 6% per annum from the date hereof on the instalments payable on May 17, 1973 and June 17, 1973 shall be payable on such dates.

3. In the event Tenant fails to make any of the following payments:

a. The payments as provided for hereunder; and/or

b. Rent and additional rent as it becomes due under the leases and modification agreements referred to herein;

the full amount due hereunder shall become immediately due and payable.

4. It is expressly understood and agreed that Tenant shall remain in possession pursuant to the lease and modification agreements referred to herein and pay rent and charges as provided therein.

5. The said lease and modification agreements, and each of the provisions thereof, shall remain in full force and effect, and upon the failure to make the payments herein provided for, or the rents and additional rents hereinafter due as specified in said lease agreements, Landlord shall continue to have all remedies available to it under said lease and modification agreements, together with any and all remedies available to it at law or in equity.

Dated: New York, New York
April 17, 1973

WEIS SECURITIES, INC.
(formerly Weis Voisin & Co.)

By _____
Chairman of the Board

ONE ESTATES, INC.

By _____
Benjamin Miller, Vice President

American Stock Exchange, Inc.
National Association of Securities Dealers, Inc.

TENTATIVE

#4

303a

PART I

Weisin & Co., Inc. N955850373

This Report covers the period from (MM DD YY) 020473 102
to (MM DD/YY) 030873 103
Number of trade days covered in this Report 25 104

EXECUTIVE SUMMARY

(See Instruction 4—Part III)

Item 730	$ 6,238,882	110
Item 750	$ 73,257,081	111
Ratio of aggregate indebtedness to net capital	% 11 74	112
Net capital in excess of 2% of aggregate indebtedness (1500%)	$ 1,253,344	113
Net capital in excess of 5% (1250%) of aggregate indebtedness	$ 1,021,459	114
Net capital in excess of 10% of aggregate indebtedness (1000%)	$	115
Expansion: Item 1270 divided by Item 750. See NYSE Rule 326, ASE Rule 471	% 13 64	120

FINANCIAL DATA

Accounts receivable — 30 days and over	$ 43,025	121
Accounts payable to receive — 30 days and over	37,221	122
Market value of actual and contractual purchases, security commitments, including when issued trades — Included in Item 3500 (See Instruction, Part III B)		123
Market value of securities	4,501,002	124
Long, proprietary securities	9,950,364	125
Short, proprietary securities		126
Subordinated borrowings	429,329	127
Deductions and/or charges per Rule 15c3-1(c)(2)(iv) (See Instruction, Part III B)	236,944	128
Other deductions and/or charges per Rule 15c3-1(c)(2)		129
Total capital and allowable subordinated liabilities (Item 1770)	2,031,509	130

Total ownership equity (Item 1800) (See Instruction, Part III B)	$ 775,520	131
Deduct ownership equity not allowable for Net Capital	(441,029)	132
Total ownership equity qualified for Net Capital	334,491	133
Add: A. Liabilities subordinated and allowable in computation of net capital	413,494	134
B. Other (deductions) or allowable credits (List)	(77,289)	135
Total capital and allowable subordinated liabilities	670,696	136
Total capital and allowable subordinated liabilities from Item 1770	2,031,509	137
Deductions for: A. Total nonallowable assets from Item 1580	(1,031,077)	138
B. Secured demand note deficiency	0	139
C. Commodity futures contracts and spot commodities — proprietary capital charges	0	140
D. Other deductions and/or charges	(0)	141
Other additions and/or allowable credits (List)	20,221,283	142
Net capital before haircuts on securities positions	20,221,283	143

PAGE 1-1

EXHIBIT Q

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Weis Securities, Inc.

Reconciliation of Net Capital and Liabilities to Aggregate Indebtedness at March 30, 1973

	Net Capital	Aggregate Indebtedness
Amounts as reported on the Joint Legislatory Report	$ 623882	$ 13253031
Less adjustments - As attached Schedule	3670012	
Add adjustments - As attached Schedule		3818872
Adjusted Net Capital and aggregate Indebtedness	$ 2563870	$ 17101753

Pertinent Capital Statistics as Reported

Net Capital	$ 623882
Aggregate Indebtedness	13253031
Ratio of Net Capital to Aggregate Indebtedness	1174 %
Excess Net Capital	

Pertinent Capital Statistics as Adjusted

Net Capital	$ 2563870
Aggregate Indebtedness	17101753
Ratio of Net Capital to Aggregate Indebtedness	3001 %
Net Capital Deficiency	2571260

EXHIBIT R

Adjustments to Net Capital and Aggregate Indebtedness as of March 30, 1973

	Net Capital	Aggregate Indebtedness
Haircuts on long securities contained in the subsidiary Hackett & Isaacs Omnibus account	69144	
Securities not readily marketable	108028	
Pricing and Haircut errors in conversion Account securities	(2633)	
Mathematical error in totaling "haircuts"	100000	
Haircuts on securities contained in syndicate accts	185327	
Haircuts on long securities contained in the WC&S Subordinated accounts	171033	
Haircuts on long securities contained in the WC&S Subordinated Omnibus Acct	21875	
Disallowance of a subordinated account which contained a debit balance	1423	
Pricing error on Pan Am Bonds	171500	
Haircuts on long securities positions with offsetting Subject-to-short positions	(5178)	
Loss on time option account	1860	
Advances to Officers-50% settled via accrual/expense	193160	193160
Interest Receivable on Officers Loans & Due from Stockholders	78126	
Travel Advances settled via other liabilities	31213	31213
Misc. Capital receivable - Sol	15000	
Interest Receivable on Subordinated - unrotated	27000	
Haircut on Standby Commitment - Inv. Elec. Power	595200	
Cash Margin Deficiency - Secured Demand Note	8560	
Reclassification acct - Insurance Claim Receivable Credit Balance netted	17463	12671
Totals forward	1900716	856024

Weis Securities Inc

Adjustments to Net Capital and Aggregate Indebtedness as of March 30, 1973

	Net Capital	Aggregate Indebtedness
Totals Forward	1900976	350944
Netting of Stock Loans vs Stock Borrows		2164000
Unsecured Customers Accts	3666	
Unsecured Debits in Customers Commodity accts	123231	57062
Netting of Customer accts		
Customers' Commodity accts in deficit	2125	
Netting of Dividends Receivable and Payable	125345	166317
Payoff in Customer Security Accts - Overstatement		14156
Unpaid Rent not accrued - plus interest	177885	177885
Five day Commissions Income - Overaccrual	28219	
Provision for RR Compensation		6481
SIPC Dues for 1972 - Last Quarter	2524	2524
SIPC Dues for 1973 - First Quarter	3553	3553
Sale of Securities not long - as cost to cover offsetted	258347	
Clearing House Fee - on Settlement of Spread	29181	29181
Subordinated Interest - " "	23640	23640
Advertising Exp. - " "	12186	12186
Total Adjustments (at 5/15/73)	3670012	3943372

Prepared By [illegible] Date 5/1/73
Approved By

LCIS, Virgin ... Co, INC

FORMA FOR DETERMINATION OF FINANCE REQUIREMENT SCHEDULE 1

AS OF MAY 1, 1973

		DR	CR	DEBIT	CREDIT
	Cutnecas				
1	Total Ref. Trial Balance			104395122	41269965
2	Commitments (estimate)				200000
3	Less: Subordinated Interest		2048789		
4	03 Stockholder	7268	1127039		
5	04 Expense	155306	—		
6	05 Interest	32373545	23749		
7	06 Dividends Interest	1358293	25072010		
8	07 Sh + T	211128	245795		
9	08 Vcl + Liquidation	4897660	1843754		
10	09 Vessel-Acq Disposal	1749916	2432521		
11	10 Acc & Pc & E	443563	9371		
12		1143450	145317	41690129	32948346
13				62755293	8521619
14	Add:				
15	5 Vol Commitments Facilities (Estimate)			475000	
16	2 Excess Interest Income (Gil, Receivable)			380000	
17	1 Divid Differences (CR)			7622	
18				63617915	8521619
19	Less:				
20	Unissued options				25000
21	5 Term Long (Schedule 3, line 5)				395023
22	Days Difference (DR)				
23	1 of Hedges on Debit Balances			636179	
24				62981736	8101536
25				Total of Formula	Total of Formula

(1) Broker Summary of T/B - and Tools.
(2) 00-0100 to 01245 excluding 01175
(3) $2000 per day from the 5th of the month.
(4) Broker Summary of T/B - not T/B.
(5) Balance Complete

EXHIBIT 9

Mr. Sol Leit
25 Sutton Place
New York, New York

May 16, 1973

Dear Mr. Leit:

As you know, the New York Stock Exchange is making investigation into the financial position, record keeping and financial reporting of Weis Securities, Inc. In this regard, it is requested that you appear at the offices of the New York Stock Exchange at 55 Water Street on May 22, 1973, at 10:00 A.M. to give testimony on this matter.

Pursuant to Article XIV, Section 23 of the New York Stock Exchange Constitution, you have the right to be represented by counsel at your appearance before the Exchange.

Your failure to appear at the above-mentioned time, may be construed by the New York Stock Exchange as a failure to cooperate and may subject you to discipline pursuant to Article XIV, Section 9 of the New York Stock Exchange Constitution.

Very truly yours,

Fred J. Stock, Jr.

Fred J. Stock, Jr.
Vice President

CC: Lee Feltman, Esq.

EXHIBIT T

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Member Firms. On my left is Mr. Stephen Lewis, Special Counsel and a member of the staff of the Department of Member Firms. On my right is Mr. Stuart Fields, Senior Conduct Investigator and a member of the staff of the Department of Member Firms. The Board of Directors has authorized me to require members, allied members and employees of members and member organizations to appear and testify in connection with investigations.

I should also like to remind you that a person who is adjudged to have made a misstatement upon a material point to an officer or employee of the Exchange so authorized by the Board of Directors may be suspended or expelled for said misstatement.

Is that clear, Mr. Leit?

MR. LEIT: That is clear.

MR. FELTMAN: Now, if I may interject.

Prior to the beginning of our session this afternoon I had requested from you, Mr. Nelson, a detailed statement of the allegations which have been apparently made by others charging my client with misconduct, and I would ask you at this time to give me the details of

EXHIBIT U

such allegations and charges that were made, the names of the persons making such charges and the dates on which they made such charges, and the statements that were made.

MR. NELSON: Mr. Leit, the Exchange has requested you to appear at this time to afford you the opportunity of giving your side and of advising the Exchange of what may have taken place at Weis Securities, and I afford you this opportunity at this time.

MR. FELTMAN: I would like an answer to the question which I have asked.

MR. NELSON: Mr. Feltman, as I had advised you telephonically, prior to your coming in with your client, I was going to ask your client to tell me what, if any, violations of the Constitution and Rules of the New York Stock Exchange, and what, if any, violations of the Securities Laws, or the Security Law of the Securities and Exchange Act of 1934 and the rules thereunder may have occurred at Weis Securities, and I am now offering him said opportunity.

Mr. Leit --

MR. FELTMAN: Mr. Nelson, I have directed my client not to reply to that question.

Mr. Nelson, if I may.

Do you want me to say something on this? I think I am entitled.

MR. NELSON: Mr. Feltman, I am here to afford your client the opportunity to speak.

MR. FELTMAN: I am not dealing with this question. I think I have the right to make a statement on the record.

MR. NELSON: Let's go off the record.

MR. FELTMAN: No. I want this on the record.

MR. NELSON: On the record.

Mr. Feltman, we are not here to afford you the opportunity of making speeches on the record. We are here to afford your client the opportunity of telling the Exchange of any violations that may have occurred at Weis Securities.

MR. FELTMAN: Mr. Nelson, may I ask for a response to the question I have asked? I have directed my client under the circumstances not to give a sworn

statement in the manner in which you intend, because I don't think it affords him due process. I don't think it gives him the opportunity to fairly meet whatever charges have been made, and until you give him such an opportunity to face such charges in detail, which I have outlined, I am prepared to consider whether my client would give such a sworn statement.

MR. NELSON: Does your client know of any violations?

MR. FELTMAN: I have directed my client not to respond to that question until I get an answer to the question I have asked.

MR. NELSON: Mr. Feltman, your client would have the opportunity to answer charges as presented. We are affording him this opportunity so that we wouldn't be adding one other charge, which we consider to be a failure to cooperate. May I point out for your information, Article XIV, Section 9, and I afford you the opportunity of reading same

MR. FELTMAN: I am aware of Article XIV, Section 9. I think my client would fail to get due process unless

the procedure I suggested is followed. I represent my client and he is prepared to cooperate with the Exchange in this situation provided he is given due process, which I think he is entitled to.

MR. NELSON: Could you, for the record, state the case which requires quasi judicial --

MR. FELTMAN: Mr. Nelson --

MR. NELSON: Have I interrupted you?

MR. FELTMAN: I have no such citation at this time. I think it is elementary in these things that due process is necessary when a man is confronted with charges, and if you would say to me that you are not going to indicate those charges then I can take a position.

MR. NELSON: I want, first of all, to afford Mr. Leit the opportunity of advising the Exchange, as an allied member, whether he knows of any violations that may have taken place at Weis Securities.

MR. FELTMAN: I have directed my client, that under those circumstances, at this time, he will not make such a statement until he is confronted with the

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charges, which you apparently have told him about and me.

MR. NELSON: I have never spoken to Mr. Leit.

MR. FELTMAN: To me; and you have indicated that there are people who have made very serious charges against him. Until he is given the opportunity of knowing what these charges are, my client will not make a sworn statement.

MR. NELSON: Will your client tell us whether any violations, to his knowledge, took place at his firm?

Can we clarify one thing for the record?

Mr. Leit, were you an officer of Weis Securities?

MR. FELTMAN: I have directed my client not to respond to any questions until I am given an answer to the question which I have asked.

MR. NELSON: One of the allegations made was that Mr. Leit required certain employees and executives to falsify books and records of Weis Securities.

MR. FELTMAN: By whom were such charges made?

MR. NELSON: Mr. Feltman, you are not interrogating the Exchange; the Exchange is interrogating your client.

I want to thank you very much for coming in.

(Whereupon, at this time the record was closed.)

Committee Reporter

/ajb

Lee Feltman
Attorney at Law

295 Madison Avenue - New York, N.Y. 10017
(212) 679-5450

July 2, 1973

Secretary of the New York Stock Exchange
23rd floor
55 Water Street
New York, N.Y. 10041

Subject: Charges against Sol Leit, Allied Member and President of Weis Securities, Inc.

Dear Sir:

This is in response to the charges against Sol Leit, allied member and President of Weis Securities, Inc. I am the attorney for Mr. Sol Leit. Mr. Leit has received from the New York Stock Exchange, Department of Enforcement, a memorandum which includes certain charges against him which appear in such memorandum as Charges I through VIII, inclusive, dated June 4, 1973, and are signed by Stuart K. Nelson, Assistant Vice-President.

This answer is being filed on behalf of the accused by his attorney with the Secretary of the Exchange in accordance with Article XIV, Section 14, of the Exchange Constitution.

The accused neither admits nor denies each of the charges made against him but demands that a hearing be called to consider the charges in accordance with the provisions of the previously cited section of the Constitution of the New York Stock Exchange.

Pursuant to my advice, the accused has decided to remain mute because of the following reasons:

1) The New York Stock Exchange has obviously predetermined the issue of my client's guilt as appears from a release issued by

the Chairman of the New York Stock Exchange in a news item which appeared in the New York Times.

2) My client has not been permitted access to any of the documents or personal papers left by him at the offices of Weis Securities, Inc.

3) My client has been informed by the Securities and Exchange Commission that this matter has been referred to the United States Attorney for the Southern District of New York for possible prosecution and he has been asked to appear at the office of the United States Attorney on Tuesday, July 3rd, 1973, to be interviewed in connection with such charges.

I have advised my client not to make any written statement to the New York Stock Exchange in answer to such charges until there has been a determination of whether he is to be prosecuted.

Very truly yours

LF/ab

cc.: Mr. Stuart K. Nelson

Leo Fellman
Attorney at Law

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M. E.
CONDUCT D...
JUL 19 1973

295 Madison Avenue - New York, N.Y. 10017
(212) 679-5456

July 18, 1973

Dennis M. Pape, Esq.
Special Counsel
New York Stock Exchange, Inc.
23rd floor
55 Water Street
New York, N.Y. 10041

Re: Charges against Sol Leit

Dear Mr. Pape:

This is in response to your letter of July 10, 1973.

Mr. Leit has instructed me that he wishes to stand on his Answer submitted on his behalf in my letter of July 2, 1973. I repeat that Mr. Leit neither admits nor denies the factual allegations contained in such Charges and denies specifically your right to deem them admitted unless he factually responds.

Very truly yours

Leo Fellman

LF/ab

cc.: Mr. Sol Leit

NEW YORK STOCK EXCHANGE, INC.
DEPARTMENT OF MEMBER FIRMS
23RD FLOOR
55 WATER STREET
NEW YORK, N. Y. 10041

...MPE
... COUNSEL
... 6480

July 10, 1973

Lee Feltman, Esq.
295 Madison Avenue
New York, New York 10017

Re: Charges against Sol Leit

Dear Mr. Feltman:

The following is in response to your letter of July 2, 1973, which you have submitted on behalf of Mr. Leit in reply to the Charge Memorandum dated June 4, 1973. In this regard, said letter does not conform to the requirements of Article XIV, Section 14 of the Constitution of the New York Stock Exchange, Inc. That provision states, in pertinent part, "The answer (to a charge memorandum) shall indicate specifically which statements of alleged fact contained in the charge or charges are denied and which are admitted. Any such statements in the charge or charges not specifically denied shall be deemed admitted." Inasmuch as the charges specifically incorporate the material contained in the Charge Memorandum (section entitled "Statement of Facts and Explanation" and the Exhibits referred to therein), an answer must specifically deny such factual allegations or they will be deemed admitted.

You are, therefore, given until July 16, 1973 to submit an answer conforming to the above cited provision of the Constitution. Failure to do so will be treated as an admission of the facts and charges contained in the Charge Memorandum.

Very truly yours,

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EXHIBIT M - MEMORANDUM FROM NEW YORK REGIONAL OFFICE TO DIVISION OF ENFORCEMENT - MANDEL

MEMORANDUM

To : Division of Enforcement

From : William D. Moran, Administrator
New York Regional Office

Subject : WEISS SECURITIES
(Formerly known as Weis, Voisin, Cannon)
(8-12472)

Recommendation: That the Commission issue a formal order of investigation.

BACKGROUND

Weiss Securities Inc. ("Weiss") is a registered broker-dealer. It is a member of the New York and the American Stock Exchanges as well as the NASD. On April 27, 1973 this office learned that Weiss was encountering net capital difficulties in that its net capital ratio was approaching 1400%.1/ At the time we learned of this information we were assured by certain representatives of the firm that substantial sums of money would be coming in to the firm in the form of subordinated loans and that this fact, when coupled to the plan to merge with another broker-dealer,

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1/ As a member of the New York Stock Exchange the maximum ratio that is permissible is 1500%.

Ladenburg Thalman Co., Inc., would eliminate any financial problems.2/

To date, information gathered by the staff with regard to the financial affairs of Weiss indicates that the gravity of the financial situation may have been, and may still be, more serious then originally thought, and that there may have been a deliberate attempt to understate the expenses of the firm in an effort to reduce the aggregate indebtedness of the firm so as to improve its net capital position.

FACTS

I

As stated above, this office was informed that a financial problem existed on April 27. On the same day, a representative of the New York Stock Exchange advised the Commission (through the person of William Finegan) that the firm appears to be approaching net capital difficulties and that its ratio of aggregate indebtedness to net capital was over 12 to 1 and could have been high as 15 to 1.3/ At this time

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2/ We have been informed that a contract of merger has been executed, but that the merger itself has not yet been consummated nor has the New York Stock Exchange given its final approval. Although we have no definitive information as to what the outcome of this merger may be, in light of developments discussed within this memorandum, we have been informed by representativ of the New York Stock Exchange that Ladenburg is apprised of the current finacial situation at Weiss, but not yet fully apprised as to the underlying cause of that crises.

3/ This advice was given pursuant to the requirements of Section 17(a) of the Exchange Act and 17a-11 thereunder.

the staff was also informed that the net capital position was approximately $500,000 below that which was required to assure that the firm had a healthy net capital position. Advice was also given to the effect that at least two million dollars was expected to come into the firm within the next few days to alleviate the problem.4/

On May 1, 1973, the Commission was further advised, again through the person of William Finegan, that the Exchange had a definitive trial balance as of March 31 which reflected a net capital deficiency of at least one million dollars and a ratio which was at least 1900%. At this time, we were also advised that the New York Stock Exchange gave "official notice" to Weiss that as of March 31 it was in net capital violation. Thereafter, the Exchange sent a letter to the Commission to formally advise us that Weiss was in net capital violation as of March 30; that it had a capital deficiency of one million dollars, and that its aggregate indebtedness was some seventy-five million dollars as opposed to a net capital position of approximately four million dollars.

We have been informed by representatives of the New York Stock Exchange that the firm's financial condition is being monitored on a daily basis and that present figures indicate that the firm is in capital compliance.5/

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4/ At this point we do not know how much money has come in to the firm in the form of subordinated loans. We believe it is in excess of two million dollars, but the Exchange has not yet approved any of the subordinated loans, so that at least in the technical sense, subordinated loans that have come in are - strictly speaking - liabilities of Weiss.

5/ This statement was made with the caveat that the situation was "touch and go and that at best, capital compliance was on a borderline basis."

According to information supplied by the New York Stock Exchange certain questions have arisen with respect to the underlying cause for the relatively sudden emergence of a net capital problem at Weis. Specifically, information developed indicates that the former Comptroller of the firm (Joel Kubie) may have deliberately falsified or doctored the records of the firm to understate expense items. It further appears that this practice may have been extant from at least December, 1972 through March, 1973 and that three officers of the firm in addition to Kubi may have deliberately and knowingly falsified the records in question.6/ The firm's expenses may have been understated by at least two and one-half million dollars.7/

CONCLUSION

The foregoing facts give rise to several problems involving possible violations of the securities laws. The most obvious violations would, of course, be those of the bookkeeping and net capital rules. It is clear that the firm should have notified the Commission of its capital problem pursuant to Rule 17a-11. To date, this has not been done. Moreover, if in fact the records of the firm do not truly reflect the firm's

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6/ Kubie in addition to being Comptroller was a senior vice-president of the firm. The other individuals who may be involved are Arthur Levine, Sol Leit and Alan Solomon. Their positions in the firm are Chairman of the Board of Directors, President and Executive vice president, respectively

7/ As a result of this, the firm has set up a suspense account for this amount which has been treated as a charge to capital.

capital position, there may also be violations of the anti-fraud provisions. Finally, and of especial and disturbing significance are the allegations that certain principals of Weiss either knew and/or instigated the falsifying of the firm's records to masque the firm's deteriorating financial condition. 8/

A formal order of investigation is needed in this case. As indicated above the New York Stock Exchange has commenced an investigation into the aforesaid allegations and has taken some testimony. It has been our experience that the Exchange is most reluctant to turn over its files in the absence of a subpoena. Moreover, if the records of the firm have been falsified it would be necessary to trace certain expense items which will in all probability entail the need for bank records. Again, it has been our experience in the absence of a subpoena a bank will not make its records available. Accordingly, it is recommended that the Commission issue an order of investigatio

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8/ According to the Joint Regulatory Reports filed by Weiss in January, February and March of this year, the firm has been operating at a loss.

Prior experience in cases of this nature, indicate that there may well be other violations involving the hypothecation of customers' securities, the illegal extension of credit and violations of Rule 15c3-3. Accordingly, we will also endeavor to ascertain whether any violations in these areas have occurred.

William Nortman
Assitant Regional Administrator 212-264-1640

Franklin D. Ormsten
Chief Attorney, Br. #4 212-264-1600

Jeffrey Tucker
Attorney, Br. #4 212-264-8586

Barry Mandel
Attorney, Br. #4 212-264-1671

5/14/73

SEC. EXCH. COMM.
N. Y. REGIONAL OFFICE
RECEIVED
MAY 17 1973

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

MAY 14 1973

In the Matter of WEIS, SECURITIES, INC. (8-12472) File No. NY - 5004	ORDER DIRECTING PRIVATE INVESTIGATION AND TO DESIGNATE OFFICERS TO TAKE TESTIMONY

I

The Commission's public official files disclose that:

A. Weis Securities, Inc., formerly Weis, Voisin & Co., Inc. ("Weis), with its principal place of business at 17 Battery Place North, New York, is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act) and has been registered as such since August 1, 1965.

B. Weis is a member of the National Association of Securities Dealers, Inc., a national securities association, registered pursuant to Section 15A of the Exchange Act.

C. Weis is a member within the meaning of Section 3(a)(3) of the Exchange Act, of the New York Stock Exchange, Inc., the American Stock Exchange and other national stock exchanges registered pursuant to Section 6 of the Exchange Act.

II

Members of its staff have reported to the Commission information which tends to show that:

A. Weis, from on or about January 1, 1972 to date, has made use of the mails or means and instrumentalities of interstate commerce to effect transactions in and to induce an attempt to induce the purchase and sale of securities (other than exempted securities, commercial papers, bankers' acceptances, or commercial bills) when not in compliance with the financial requirements imposed by the New York Stock Exchange.

B. Weis, from on or about January 1, 1972 to date and while a broker-dealer registered with the Commission pursuant to Section 15 of the Exchange Act, has failed to accurately make, keep current and preserve certain books and records in accordance with Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder.

C. Weis, from on or about January 1, 1972 to date and while a member of a national securities exchange and subject to the net capital rule of such exchange has failed to notify the Commission, pursuant to Section 17(a) of the Exchange Act and Rule 17a-11 thereunder, that:

1. the firm's net capital was less that the minimum required by the net capital rule to which it was subject; and

2. the firm failed to make and keep current and accurate the books and records as specified in Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

D. Weis and other persons, from on or about January 1, 1972 to date, have made use, directly or indirectly, of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange to employ a device, scheme or artifice to defraud in connection with the purchase or sale of any security in that:

1. Weis and other persons failed to appropriately notify customers of the firm that it was in violation of the net capital and bookkeeping provisions of the federal securities laws;

2. Weis and other persons caused false entries to be made upon the books and records of the firm; and

3. Weis and other persons caused the firm to file false and misleading financial reports to the regulatory bodies to which it was subject.

E. Weis and other persons, from about January 1, 1972 to date have failed to appropriately segregate customers' securities and credit balances in accordance with Section 15(c) of the Exchange Act and Rule 15c3-3 thereunder.

F. Weis and other persons, from about January 1, 1972 to date have extended and arranged for extensions of credit in excess of the maximum allowed pursuant to Regulation T promulgated by the Board of Governors of the Federal Reserve Board.

G. Weis, from about January 1, 1972 to date and while a member of a national securities exchange has hypothecated securities carried for the accounts of customers in violation of the provisions of Section 8(c) of the Exchange Act and Rule 3c-1 thereunder.

III

The Commission having considered the staff's report and deeming such acts and practices, if true, to be in possible violation of Section 17(a) of the Securities Act of 1933 and Sections 7(c), 8(c), 10(b) 15(c) and 17(a) of the Exchange Act and Rules 10b-5, 15c3-1, 15c3-3, 17a-3, 17a-4 and 17a-11 thereunder, finds it necessary and appropriate and hereby

ORDERS, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934 that a private investigation be made to determine whether the aforesaid persons or any other persons have engaged or are about to engage in any of the reported acts or practices or in any acts or practices of similar purport or object, and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 19(b) of the Securities Act of 1933 and Section 21(b) of the Securities Exchange Act of 1934 that for the purpose of such investigation William D. Moran, William Nortman, Franklin D. Ormesten, Michael D. Harris, Barry J. Mandel, Jeffrey Tucker, Steven J. Shore, Stuart Perlmutter, John J. O'Connor, Thomas F. Fox and Jeffrey Morrison and each of them, is hereby designated an officer of this Commission and is empowered to administer oaths and affirmations, subpoena witnesses; comple their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, or other records deemed relevant and material to the inquiry, and to perform all other duties in connection therewith as prescribed by law.

By the Commission.

Ronald F. Hunt
Secretary

DRAFT
5-14-73

EXHIBIT N -
MEMORANDUM OF CONVERSATION

Subject: WEIS$ & COMPANY

I (on 5/14/73)

At approximately 11:30 a.m. through 1:00 p.m., a conference was held in the office of Mr. Moran with respect to the subject firm. In attendance were Messrs. Milton Gould and Arthur Goldman, both of whom had participated in last month's meeting. Gould is an investor[1] in the subject company as well as counsel thereto. Goldman is general counsel of the company. In attendance for the staff were Mr. Moran and myself. The purpose of the meeting was to provide Messrs. Gould and Goldman an opportunity to explain the current financial situation at Weis$. By way of background Gould stated that in January, 1973, he expressed an interest to one Arthur Carter, who is associated with Ladenburg Thalman, a registered broker-dealer, to the effect it may be desirable to merge the two firms. It was Gould's belief that Weis$ needed, but lacked an

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1/ Gould indicated he has one-half million dollars invested in the firm

investment banking image and the concomitant facilities. Ladenburg, on the other hand was strong in investment banking but lacked the retail strength possessed by Weiss. Gould further explained that a deal at that time could not be worked out because of a disagreement amongst the principals as to whom would assume a paramount role. Gould then stated that either in late March or early April of this year, he met with Messrs. Levine, Leit and Rubin (of the letter Gould's law firm) and that he was advised by them (1) that Mr. Joel Kubie former controller of Weiss related to them that he (Kubie) stated that he understated accrued obligations of Weiss in order to get the earnings of the firm up 2/ and to generally improve the financial picture of Weiss; (2) that two and one-half million dollars of under accrued expenses were involved which could be absorbed, and such the absorption could bring the firm's

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2/ Gould later suggested as a motive, the fact that the firm may have contemplated a public offering of the securities and that it would have been desirable to improve the firm's financial picture in connection therewith.

net capital ratioup to 1200%. In reaction to this disclosure, Gould stated that he made certain suggestions including, reducing the firm's positions in securities; approaching Carter to rekindle the Ladenburg merger; contacting the NYSE; informing the Board of Directors and the executive committee of Weiss of the situation, and to call the accounting firm of Touche, Ross. Gould also advised that at the time of this meeting, he was also informed that the discussions with Kubie had taken place a few days before; that Kubie left the firm (been fired) and that his interest were bought out. Gould went on to say that thereafter he called the New York Stock Exchange.3/ Thereafter, Gould stated he met with representatives of Ladenburg and apprised them of the situation as reported by Kubie disclosures and the need for additional two and one-half to three million dollars in the firm. Gould further advised

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3/ He did not recall whether he spoke to Bob Bishop or William Shields.

that he discussed the situation with certain subordinated creditors of Weiss including a Mr. Katz who had some 3.75 million dollars in the firm as a result of the Schenley Hochstein merger and a Mr. Jack Gardner who represented an insurance group from Chicago that had subordinated some three million dollars to the firm as of January, 1973. Gould indicated that he also contacted other subordinated members of the firm.

Gould then stated that he was actively working on the merger deal and that a contract was signed. One and one-half to two million dollars or "interim money" had actually come in and that upon the closing of the merger deal it was expected that an additional two to two and one-half million dollars in further monies would be infused into the firm.4/

4/ At this time discussion was held during the conference concerning the fact that the New York Stock Exchange had not yet approved any of the money that had come in or was expected to come in. Gould attributed this to the fact that the Exchange was still wrestling with the problem of an appropriately worded "~~knowlegeable~~ knowledgeability letter" and that he expected to have such letters issued this day.

III

Gould then again directed his attention to the problem of the misstated expense items. He explained when Kubie left, a Mr. Lynn, who was assistant Comptroller, took over Kubie's responsibilities. Gould stated that on Wednesday, May 9 he learned that the New York Stock Exchange wanted to see Lynn. In connection therewith, Gould had a meeting with Lynn late in the afternoon of May 9 or early in the evening. He stated that Lynn informed him that approximately a year ago (Lynn) and Kubie were subjected to certain pressures to improve the earnings picture of Weiss and reduce their apparent costs ~~to the reason that~~ because the firm may have wanted to go public; that ~~x~~ in connection with the last certified financial report (May, 1972) the accountants were "snowed" and, that in ~~connection~~ with regard to the prepartion of expense items there were "very serious improprieties" and not simple mistakes ~~of~~ concerning the under accruals.

Thereafter (probably May 10) Gould again saw Lynn and based upon Gould's conversations with Lynn, it appeared

that Messrs. Levine and Leit were responsible for putting the pressure on to improve Weiss' financial picture.5/

On May 11, Gould had a meeting with Messrs. Carter, Rosen (of Ladenburg), Rubin and Kate to tell them the complete story. Gould stated that Carter and Rosen indicated that Ladenburg would still ~~xxxxx~~ stay in the deal.

Gould ~~then~~ further advised that between 4.2 and 4.3 million dollars in new money was in place. He added that his immediate objective was to isolate Levine and Leit and that it was his intention to install "Sonny" Hertzberg in a position to run the firm. Gould stated that he expected the capital ratio to be about eight to one if the merger was t~~o be~~ consummated and if all the monies ~~come~~ came in as expected.6/

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5/ Gould indicated that of the two, it appeared that Leit may have been more heavily involved.

6/ When asked by Mr. Moran, Gould indicated that the merger deal could be lost if further losses were discovered and/or Ladenburg insisted on a greater conversion of presently existing debt into equity.

Mr. Moran advised that we intended to conduct a full investigation and make use of whatever options we had available. He also stated that full cooperation of all interested parties was expected ~~xkk~~ that we intended to vigorously explore the situation. At the conclusion of the meeting, Arthur Goldman handed me a trial balance for the firm as of April 27, 1973. Both Goldman and Gould advised that they were trying to get more figures available. Goldman stated he would call this office to advise us of the name of the individual from Touche, Ross who was responsible for conducting the audit of the firm for April, 1973.7/

Moran raised the question of the soundness to now engage Touche Ross again in the light of the fact that they may have been "involved" in 1972.

7/ I had pointed out to Goldman that we believe that such an audit was necessary ~~and~~ but that to ~~xxxxx~~ comply with Rule X17a-5 it would be necessary to have an audit completed ~~and spoke~~ as of a period no earlier then May, 1973.

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I raised with Messrs. Gould and Goldman the fact that the Commission was notified by the Exchange that the Exchange considered the firm to be out of ratio as of March 30, 1973. Both gentlemen indicated this was the first they heard of it.

WILLIAM NORTMAN
Assistant Regional Administrator

May 15, 1973

This is to supplement Mr. Nortman's foregoing memorandum and also to outline the investigative steps we intend to take in this matter in the future.

At one point in his dissertation Mr. Gould stated that any sudden or premature publicity might very well kill off the Ladenburg Thalmann deal. I advised Mr. Gould that the disclosures which he made concerning the two top officers of the firm, if true, presented a most serious situation calling for, when the facts are established, prompt and drastic action on the part of the Commission; and in that connection, we intended to take whatever steps were necessary in the public interest.

While dictating the foregoing, Milton Gould called me at 10:35 (5/15/73) and stated that his contingent had a meeting at the Stock Exchange last night and that the ~~$1 1/2~~ 1,960,00 ~~million~~ mentioned earlier in the Nortman memorandum had been approved by the Stock Exchsnge and now is in the till of the Weiss firm. Translated in another way, it would appear that the Stock Exchange, which had not approved the

money up until last night's meeting because they wanted to approve the knowledgeability. According to Gould, the "knowledgeability aspects have been taken care of, the money is in and the firm is within the 15 to 1 ratio.

Gould also reported that he was optimistic that the Ladenburg deal could go through.

After the Goldman-Gould meeting, the staff met to discuss the steps we should take in this matter, and in this connection, the following areas were covered:

1) An immediate meeting with the New York Stock Exchange people officers handling this matter to find out what they have done to date (meeting scheduled for 11 o'clock today, May 15).

2) A meeting with the accountants (Touche Ross) to find out what they have discovered in their examination of the Weiss books and records to date and the possibility of discussing what areas we would wish them to have explored.

3) Jeffrey Morrison and such other help from the Broker-Dealer Section as is needed to be put on this matter immediately.

4) We must ascertain how far back the alleged falsification of the books snd records go, how it started, who is responsible for it, etc.

5) We must keep in mind the possibility of not only the falsification of the bookeeping records but also the ~~record of whether~~ the question of whether the X17a-5 submitted as at May 30, 1972 was false and misleading.

6) We must also explore whether the Touche Ross firm pefformed their job in 1972 competently.

7) We must examine Kubie and Lynn of the Weiss firm.

8) We must explore ~~a~~ sale of stock of the Weiss firm to its employees and possibly others to determine what financial information and other information was given to them at the time of their purchase.

9) We must also explore what information, financial and otherwise, was given to any subordinate lenders during the time of the alleged falsification, ~~commenced~~.

In my conversation with Gould this morning, wherein he reported the foregoing facts, he also mentioned that a man named Salomon of ~~that~~ the Weiss firm might be involved in the activities of Levine and Leit. Gould stated he doubted it very much but there were some rumors to that effect. Accordingly we have

339a

to explore Solomon's activities, as well as the activities of all others who may have, directly or indirectly, contributed to this picture.

I reported the substance of the Gould meeting to Irv Pollack and Barney Woodside, Chairman of SIPC. My own thoughts in the matter are that, if these violationd are as serious as would appear on the surface, we should ~~seriously~~ jury think of having a grand jury ~~hearing~~ in the matter, and Irv Pollack agreed with this approach. Accordingly, after we get somewhat further in this picture and are able to ~~see~~ get more definitive facts concerning the falsifications and the people involved therewith, we should call the U. S. Attorney's Office and advise them of what we have and the need for a grand jury approach.

We must also be prepared to seek an injunction.

As soon as we have verify some of information supplied to us help to this point.

340a

In our meeting with the Exchange officials this morning concerning the Weiss situation, we were told, among other things, that the Exchange had satisfied itself ~~X~~ that with the ~~investigation~~ loan flux of some $1,200,000 of new subordinated loans, that the firm ~~of~~ would have an excess of net capital of $200,000.

As of 4:30 this afternoon, May 15, 1973, Jeffry Morrison was told by Mr. Shields of the Exchange that as of tomorrow morning, to wit: May 16, 1973, Weiss, with an additional ~~of~~ $250,000 ~~more~~ of subordinated loans, plus a transfer of accounts (customers) which would have the effect of reducing the firm's aggregate indebtedness, the Weiss firm will be in deficit to the tune of ~~$200~~ 122,000. When Fitzgerald reported ~~of~~ a the $200,000 excess as of May 14, 1973 it should have been a $200,000 deficit; with the inclusion of the $1,010,000 subordinated the firm had an excess of net capital of ~~$80,050,000~~ $1,850,000. After an adjustment by the Exchange ~~p~~ examiner, there will be ~~reported~~ above a deficit of $122,000.

I called Milton Gould about ~~this~~ the above figures and ~~told~~ told him to speak to the Touche Ross firm because their exsmination suggested

possibly a need for additional capital. Gould said he was taking all these things into consideration and the subordinated lenders were meeting tonight to raise at least $122,000 prior to the opening of the Exchange. Gould also talked with the Ross people to see if more money was needed.

EXHIBIT P - NOTICE OF MOTION PURSUANT TO RULE 12 AND AFFIDAVIT OF ALAN C. SOLOMON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -against- ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, Defendants.	73 Cr. 693 Notice of Motion Pursuant to Rule 12 of the Federal Rules of Criminal Procedure

Please take notice that, upon the affidavit of Alan C. Solomon, sworn to September 21, 1973, and the accompanying memorandum of law, the undersigned will move this Court, before the Honorable Robert L. Carter, at a time and place to be fixed by the court, for an order under Rule 12 of the Federal Rules of Criminal Procedure suppressing testimony given by defendant Alan C. Solomon at the New York Stock Exchange on May 17, 1973.

Please take further notice that defendant Alan C. Solomon hereby joins in the motions to be made on such date by his co-defendants, including any motions attacking the validity of the indictment and those seeking a bill of particulars, insofar as the relief sought therein is applicable to him.

New York, N. Y.
September 24, 1973

Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll

By _____
Arthur B. Kramer
A member of the firm
Attorneys for Defendant Alan C. Solomon
919 Third Avenue
New York, N. Y. 10022
(212) 688-1100

TO: HON. PAUL J. CURRAN
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, N. Y. 10007

JOSEPH E. BRILL
Attorney for Defendant Arthur
J. Levine
233 Broadway
New York, New York 10007

FINLEY, KUMBLE, UNDERBERG, ROTH
& GRUTMAN
Attorneys for defendant Joel Kubie
477 Madison Avenue
New York, New York 10022

LEE FELTMAN
Attorney for Defendant Sol Leit
295 Madison Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, : 73 Cr. 693

-against- :

AFFIDAVIT

ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, :

Defendants. :

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Alan C. Solomon, being duly sworn, deposes and says:

1. I am one of the defendants in this action. I make this affidavit in support of a motion to suppress certain testimony which I gave before the Department of Member Firms of the New York Stock Exchange on May 17, 1973.

2. I am 34 years old and reside with my wife and three children at 350 Evandale Road, Scarsdale, New York. I graduated from Cornell University in 1960 and I then entered the securities business as a trainee with the firm of Kaufmann, Alsberg & Co. After a short interim period with another brokerage firm, I joined the New York Stock Exchange member firm of Weis, Voisin & Cannon in 1964 or 1965. Weis, Voisin & Cannon

later changed its name to Weis Securities, Inc. I continued to work at this firm until its demise in late May of this year.

3. Thus, all of my adult working life had been spent until May of this year in the securities business. I have no other working skills or experience.

4. I was the officer at Weis Securities in charge of the firm's trading department. I was responsible for all firm trading activities and supervised the other employees of the firm who were responsible for executing orders received from Weis' many retail brokerage customers. Although I held the title of Treasurer of Weis Securities, the responsibility for supervising the firm's financial affairs and record keeping rested with others. I had no experience in accounting nor any actual responsibility for keeping the books and records. My experience, as I said, was in the area of trading and it was by conducting these trading activities that I made my contribution to the firm.

5. I had myself been a member of both the New York Stock Exchange and American Stock Exchange at various times during my Wall Street career, but my seats on both exchanges were transferred to other members of the firm for internal operating purposes some years before the events in May 1973, which are described below. But I continued, at all times in good

standing, to be an allied member of the New York Stock Exchange. Indeed, the retention of this good-standing status was critical to the performance of my trading activities at Weis Securities and to any job which I might hope to hold elsewhere in the Wall Street community. My skills and unique experience involved trading of securities listed on the New York Stock Exchange and I could not, as a practical matter, use these to obtain employment were the Exchange to suspend my allied membership.

6. Commencing in April of 1973 the Department of Member Firms of the Stock Exchange began investigating the affairs of Weis Securities, which was thought to be in some financial difficulty. Various Stock Exchange personnel came to review the books and records of Weis and I was made aware that questions had been raised concerning whether the firm had complied with the net capital and reporting requirements which the Exchange and the Securities and Exchange Commission ("SEC") imposed on Exchange Member firms. I also knew that various employees and officers of Weis Securities were being interrogated from time to time by employees of the Stock Exchange.

7. On May 14th or 15th I received a call from a lawyer on the staff of the Department of Member Firms instructing me to appear at the offices of the Department of

Member Firms of the Stock Exchange on May 17th to testify on matters relating to the financial condition of Weis and its compliance with the net capital requirements for member firms. I then arranged to meet on May 15th with Alan Hoffman, a member of the law firm of Shereff, Friedman, Hoffman & Goodman, 919 Third Avenue, New York, N.Y., who I was told had extensive experience in securities matters. I hadn't met Mr. Hoffman previously. I spent approximately 3 hours with him on May 15th, telling him what I knew of the firm's financial condition and record keeping procedures.

8. On May 17th Mr. Hoffman accompanied me to the offices of the Department of Member Firms where I was questioned at great length by various Exchange employees. The chief interrogator was Mr. Dennis Pape, Special Counsel to the Exchange. The questioning was conducted off-the-record for approximately two hours. I was then interrogated on-the-record from 11:30 A.M. to 12:30 P.M. and from 3:30 P.M. to 5:30 P.M.

9. When I retained Mr. Hoffman to represent me he told me that he had had no criminal law experience. At the time neither he nor I regarded this as a matter of any significance. Mr. Hoffman told me that to his knowledge there had never been any criminal case brought by the government for failure of any member firm or its officers to comply with the net capital and reporting requirements of the Stock Exchange and the SEC.

10. My concern at the time was to retain my allied membership in the Exchange and the right, which was dependent upon that membership, to continue to earn a living in the only way in which I was equipped to. I knew that I could not refuse to answer any questions which the Exchange through its staff members would put to me about the conduct of firm affairs and still retain my allied membership. I was aware of the provisions of Article XIV of the New York Stock Exchange Constitution which empowered the Exchange to suspend me if I refused to cooperate and answer all the questions put to me during the May 17th interrogation. Mr. Hoffman confirmed that I was subject to suspension by the Exchange if I should refuse to answer and encouraged my cooperation to avoid that denouement. My best present recollection is that Mr. Pape and his cohorts in the off-the-record discussions which preceded their formal interrogation, also reminded me of the sanction of suspension which could be imposed if I did not testify.

11. I have since learned that others of the defendants were also summoned to testify at the Exchange in mid-May. Messrs. Levine and Leit, I have been told, refused to testify before the Exchange because of the fear of self-incrimination. I have also been advised that Mr. Levine, for one, was later suspended by the Exchange for his refusal to testify.

12. No member of the Exchange staff who participated in the May 17th interrogation ever told me either on or off the record that I might refuse to testify if I had any concern about possible self-incrimination, or that anything that I might say could be used against me in any subsequent criminal proceeding. On the contrary, I was encouraged to believe that if I was cooperative and candidly told all that I knew of the affairs of Weis, that I had a reasonable chance of continuing in the securities business. I answered all the questions as fully as I could in that spirit; I was led to believe when the interrogation was concluded that they were satisfied with my answers and that my cooperation would weigh heavily against imposition of any severe penalties by the Exchange.

13. The fact is that within a matter of days the Department of Member Firms had forwarded the transcript of my testimony to the New York Regional Office of the SEC. On May 24th the SEC filed a civil complaint in this Court seeking the appointment of a receiver and an injunction against Weis Securities' continuing to conduct its business -- the net effect of which was to precipitate the demise of Weis Securities. A lengthy affidavit executed on May 23, 1973 by one Jeffrey S. Morrison of the Commission's staff contains some evidence which indicates that the complaint in that civil action was based in part upon the testimony given by me at the Exchange on May 17th. That affidavit is also replete with references to the fact that

the Exchange and Commission staffs had been engaged in a joint investigation into the affairs of Weis and its books and records beginning in April 1973.

14. The questions put to me by the Exchange staff during their questioning of me on May 17th dealt exclusively with my knowledge of the financial affairs of Weis Securities, whether it was in compliance with the net capital requirement ratios specified in New York Stock Exchange Rule 325, and whether I had any knowledge about the accuracy of the Joint Regulatory Reports which Weis was required to file each month with the Exchange and the Commission. In short, the interrogation was limited to and focused upon the very charges laid against me in the present indictment.

Alan C. Solomon

Sworn to before me this
21st day of September, 1973

Notary Public

ARTHUR B. KRAMER
Notary Public, State of New York
No. 31 7 [illegible]
Qualified in New York County
Commission Expires March 30, 19[illegible]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Maureen Marry, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 63-58 Woodhaven Boulevard, Forest Hills, New York. That on the 24th day of September, 1973, deponent served the within Notice of Motion and Affidavit upon the following attorneys in this action at the addresses designated by said attorneys by depositing a true copy of same enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Post Office within the State of New York:

Hon. Paul J. Curran
United States Attorney for the Southern
District of New York
United States Courthouse
Foley Square
New York, New York 10007

Joseph Brill
Attorney for Defendant Arthur J. Levine
233 Broadway
New York, New York

FINLEY, KUMBLE, UNDERBERG, ROTH &
GRUTMAN
Attorneys for Defendant Joel Kubie
477 Madison Avenue
New York, New York

LEE FELTMAN
Attorney for Defendant Sol Leit
295 Madison Avenue
New York, New York

Sworn to before me this
24th day of September, 1973

Notary Public

BEATRICE HARMAN
Notary Public, State of New York
No. 41-7477170
Qualified in New York County
Commission Expires March 30

Q

EXHIBIT Q - NEW YORK STOCK EXCHANGE MEMORANDUM
DATED MAY 4, 1973

Q

NEW YORK STOCK EXCHANGE

MEMORANDUM

May 4, 1973

O: William Shields, and File

ROM: R. M. Bishop

UBJECT: Weis Securities, Inc.

Milton Gould, of Shea, Gould, Climenko & Kramer, a major apital contributor to Weis Securities, called me between the oard meeting and the press conference yesterday. He told me that 1.5 million capital had been delivered to Weis during the day nd that they consequently believed the firm in capital compliance. urther, he said that the Ladenburg deal would close on Tuesday, ringing in $1.4 million more and that he expected another $500,000 n immediately from Chicago, and $500,000 from Philadelphia.

Mr. Gould told me that he had been closely involved in the ituation ever since Arthur Levine reported his suspicion that all as not well. Mr. Gould had been involved in calling in the uditors and notifying the Exchange. It was apparent from the etail Mr. Gould was mentioning that he was fully as conversant of the firm's financial facts as is the Exchange. He gave me his personal assurance that the firm is not going to be permitted to continue having capital problems.

Mr. Gould also told me that he reported at length on the firm's situation to Bill Moran and someone else at the SEC.

cc: P. H. Fitzgerald

NEW YORK STOCK EXCHANGE, INC.

353a

MEMORANDUM

May 2, 1973

TO: Paul Fitzgerald, Fred Stock

FROM: Bill Shields

SUBJECT: Weis Securities Inc.

Jack Womack reported Monday, April 30, that it appears that the firm was in violation as of the end of March. Jack said the firm would be in violation by approximately $200,000 if their figures are confirmed as accurate. The examiners will finalize the March figures today and immediately begin work on April figures. The examiners based on the assumption of two changes in the firm's capital position do not feel that April will result in a violation. However, it is too early to tell. The two items in question are the reported reductions of $1.6 million in proprietary positions and an underwriting charge of $600,000 as of March which the firm states is not applicable at the end of April.

The above information was reported to Charles Dorrler of the SEC on April 30.

Bill Shields

cc: Mr. James Swartz
Mr. D. Calvin

NEW YORK STOCK EXCHANGE, INC.

354a

MEMORANDUM

May 9, 1973

TO: Messrs. Stock and Fitzgerald

FROM: Bill Shields

SUBJECT: SEC and SIPC Conversation -- Weis Securities, Inc.

On May 7, 1973 I spoke with both Mr. John Youngs of the SEC and Mr. Lloyd McChesney of SIPC. I reported to both individuals that as of May 7 it appeared that in view of the firm's April loss of $575,000 that they were presently in violation of our Net Capital Rule by approximately $200,000.

I informed them that in our meeting with the firm, the firm had reported that they would sign a merger agreement with Ladenburg, Thalman & Co., Inc. on May 8 and upon the signing of the merger agreement, $1.1 million of additional capital presently being held in escrow by their attorneys would be infused into the firm. Additional capital would then be added to bring the firm's ratio below $1000% so that they could proceed with the merger.

cc: Messrs: Bishop
Calvin

wes.

NEW YORK STOCK EXCHANGE, INC.

MEMORANDUM

355a

May 9, 1973

TO: Messrs. Stock and Fitzgerald

FROM: Bill Shields

SUBJECT: SEC Conversation -- Weis Securities, Inc.

On May 4, 1973 I spoke with Mr. William Finnigan of the SEC regarding the current position of Weis Securities, Inc. I told Mr. Finnigan that the March violation was approximately $800,000 and that the known corrective action to date was $1.4 million. However, we did not know the amount of the April loss.

I also told him that a meeting was scheduled for Monday at which time the firm reportedly would be submitting documentation on an additional $1 million of capital.

I advised him that I would keep him abreast of the situation as new facts are learned.

cc: Messrs. Bishop
Calvin

OPINION NO. 40903 DENYING MOTION OF ALAN C. SOLOMON
(Carter, D.J.) (Filed June 28, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Copy

U.S. DISTRICT CO
FILED
JUN 28 1974
S.D. of N.Y

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
- against -	:	73 Cr. 693
ALAN C. SOLOMON,	:	#40903
Defendant.	:	

A P P E A R A N C E S:

Paul J. Curran, Esq.
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007
by Henry Putzel, III, Esq.
Assistant United States Attorney
Attorney for Plaintiff

Messrs. Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll
919 Third Avenue
New York, New York 10022
by Arthur B. Kramer, Esq.
Attorney for Defendant

CARTER, District Judge

Defendant, a former officer and director of Weis Securities (Weis) (a registered broker-dealer and a member of the New York Stock Exchange at the time in question) is under indictment, charged with knowingly causing false financial statements to be filed with the Securities and Exchange Commission (SEC) and the New York Stock Exchange (Exchange). The factual bases for the pending charges were uncovered in an investigation by the Exchange which commenced on or about April 12, 1973, when the Exchange Department of Member Firms received information of Weis' capital violation from two Weis officials. The information caused the Exchange to send to Weis the next day a team of Examiners to go over its books and records to determine the exact status of Weis' financial situation. Daily reports were made to the SEC in Washington and in New York beginning on April 27th. At that time, while aware of the capital violation, the Exchange investigators believed the situation might be corrected.

Some time early in May, however, the investigation revealed the grave dimensions of the problem. It revealed that officers of Weis had participated in deliberately and fraudulently altering the firm's books and records. On May 10, 11 and 14, Robert Lynn, acting

controller, and Joel Kubie, former controller of Weis, testified at a hearing conducted by the enforcement division of the Department of Member Firms of the Exchange, and all the sordid details were disclosed.

On May 14, Milton Gould, outside counsel to Weis, advised William Moran, New York Regional Administrator of the SEC, of the fraudulent activities which Weis had committed. The SEC then undertook its own investigation. On May 16, it subpoenaed from the Exchange all books and records in its possession in connection with its investigation, and assigned an SEC team to Weis to go over its books and records.

On May 17, 1973, the defendant gave testimony to representatives of the Department of Member Firms of the Exchange. As an allied member of the Exchange, he was advised by Exchange counsel that he was subject to expulsion or suspension from such membership if he made a material misstatement. Moreover, Article XIV, Section 9 of the Constitution of the Exchange [1] subjects

---

1. NEW YORK STOCK EXCHANGE CONSTITUTION, ARTICLE XIV, SECTION 9.

Whenever it is adjudged in a proceeding under this Article that a member, allied member or approved person has been required by the Board or any committee, officer or employee of the Exchange authorized thereby

a member or allied member to expulsion for refusal or failure to furnish information or to appear and testify before an authorized officer or body of the Exchange in respect of the books and records of his firm. Solomon appeared with counsel. There is no indication in the record that he was advised of his right to remain silent. He spoke rather freely but in essence his statements were an attempt to exculpate himself from the unlawful acts as best he could.

On or about June 1, the United States Attorney's Office for this district entered the picture which resulted in the presentation of the matter to the grand jury and indictments being handed down in July, 1973, against Arthur Levine, Sol Leit, Joel Kubie, Robert Lynn and the Defendant.

[Footnote continued from previous page]

to submit his books and papers or the books and papers of his firm or of any employee thereof or the books and papers of the member corporation in which he is a stockholder, or of any employee thereof to the Board or any such committee, officer or employee or to furnish information to or to appear and testify before or to cause any such employee to appear and testify before the Board or any such committee, officer or employee and has refused or failed to comply with such requirement, such member or allied member may be suspended or expelled and such approved person may have his approval withdrawn."

On or about June 3, 1973, the SEC secured a transcript of defendant's testimony pursuant to a subpoena. The government proposes to use this testimony in the forthcoming criminal trial of defendant.

Defendant moves to suppress the statement and for an order for a hearing to determine whether the use of defendant's testimony in the grand jury proceedings has rendered the indictment fatally defective, or in the alternative, whether because of such use various counts in the indictment can survive. The fundamental thrust of defendant's motion is that Article XIV, Section 9 of the Exchange Constitution which compelled defendant to testify on threat of expulsion, with the resultant loss of his means of livelihood, the self-policing activities of the Exchange in the enforcement of its own rules and in the enforcement of compliance with the provisions of the Securities Act of 1933 and the Exchange Act of 1934 and the rules and regulations of the SEC by its members and allied members, and the cooperation between the Exchange and the SEC in the investigation of this matter constituted a violation of defendant's Fifth Amendment rights under standards enunciated in Lefkowitz v. Turley, _____ U.S. _____, 94 S. Ct. 316 (1973); Uniformed Sanitation Men Association v. Commissioner of Sanitation , 392 U.S. 280 (1968); and Garrity v. New Jersey, 385 U.S. 493 (1967).

In a memorandum opinion dated April 16, 1973, it was held the standard to be applied in a determination in respect of defendant's motion to suppress was that enunciated in Smith v. Rhay, 419 F. 2d 160 (9th Cir. 1969); that is, that in order to prevail the defendant would be required to show collusion between the Exchange and the SEC for the Exchange to secure his testimony on threat of expulsion in order that it could subsequently be used by the government in criminal proceedings against him. The motion was initially denied on the grounds that no such showing had been made. Defendant was advised, however, that on his motion an evidentiary hearing would be held to afford him the opportunity to establish the requisite nexus of collusion between the prosecutorial arm of the government and the Exchange.

Such a hearing was requested and held on June 13 and 14. Testimony was adduced from Stuart Nelson, Vice-President of the Department of Member Firms of the Exchange; and from William Shields, Supervising Coordinator of the Department of Member Firms of the Exchange, charged with surveillance of certain member firms as to their financial, operational and profitability status; from Dennis Pape, Special Counsel and Manager of the Department of Enforcement of the Exchange, with the chief

duty of surveillance of member firms to determine whether they are in violation of the Exchange and SEC rules and regulations; from Aubrey Womach, then a principal examiner of the Exchange, whose function was to go over books and records of member firms; from Jeffrey Morrison, SEC Senior Examiner; William Moran, New York Regional Administrator; Franklin P. Ormstem, SEC Investigator; and James Schreiber, former Assistant United States Attorney, who presented the case to the grand jury which handed down the indictment in question.

Defendant relies upon holdings by this and other courts that the Exchange in its self-policing function of requiring its member firms to comply with SEC rules and regulations, as well as its own, is engaged in a function sufficiently governmental to require that certain of its acts be invested with due process safeguards. See, e.g., Intercontinental Industries Inc. v. American Stock Exchange, 452 F. 2d 935 (5th Cir. 1971); Crimmins v. American Stock Exchange, 346 F. Supp. 1256 (S.D.N.Y. 1972). These governmental trappings while basic for invocation of the Garrity proscription, do not without more, necessarily bring the matter within the enclave Garrity encompasses.

United States v. Kordel, 397 U.S. 1 (1970); Donaldson v. United States, 400 U.S. 517 (1971); United States v. Churchill, 483 F. 2d 268 (1st Cir. 1973) raised questions closely similar to the one raised here. In

Churchill, the Small Business Administration (SBA) initiated a civil action against a company in which defendant and others allegedly engaged in fraudulent activities. The SBA suspected criminal violations and discussed the matter with the Department of Justice, but was advised that gaps in evidence made the case an unlikely candidate for successful criminal prosecution. In the civil proceedings the SBA was awarded $306,377.08; a receiver was appointed for the corporation, and an SBA attorney was made attorney for the receiver. Thereafter, an involuntary bankruptcy proceeding was instituted against one of the defendants. The attorney for the receiver entered an appearance in the hearing. Some of the co-defendants were questioned but not the defendant himself. None were told that criminal conduct was suspected, nor advised of their right to remain silent. Their testimony closed many of the evidentiary gaps and criminal prosecution resulted. It was held that no violation of defendant's rights had taken place.

Similarly, in the other two cases cited the governmental agency first instituted civil proceedings, and upon learning of the criminal violations through civil discovery, then proceeded to use the evidence gained in the civil proceeding to prosecute for the criminal violations. In each case the defendants' rights

were held not to have been violated since the civil discovery had occurred before the case was actually referred for criminal prosecution. The basic rationale on which these decisions rest is that "to require a governmental agency * * * * invariably to choose either to forego recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the outcome of a criminal trial" would stultify enforcement of federal law. Kordel at 11; and see Donaldson at 536, and Churchill at 272. In each case it was pointed out that there had been no showing that the civil proceedings had been instituted to secure evidence for the criminal prosecution.

Defendant's position is that those cases are not in point because in none of them was a defendant given the Hobson's choice of testifying or facing loss of employment, which was the critical issue in Garrity. That, however, was not the basic thrust of Garrity. The real point made in that case was that an arm of government empowered to grant immunity from criminal prosecution could not make a witness choose between giving up his job or waiving his Fifth Amendment privileges. The legislation in question in New York and New Jersey in Garrity, Lefkowitz, and Uniformed Sanitation Men

Association made a refusal to sign a waiver and assertion of the right to remain silent in reliance on the Fifth Amendment guarantee the basis for discharge. See also Gardner v. Broderick, 392 U.S. 273 (1968). In such situations an answer may be compelled only if there is immunity from federal and state use of the compelled testimony or its fruits in criminal prosecutions against the person testifying. See also Spevack v. Klein, 385 U.S. 511 (1967); Murphy v. Waterfront Commission, 378 U.S. 52, 79 (1964).

Uniformed Sanitation Men, supra, makes clear the reach of Garrity. There it was said at 284 that public employees may be required to "answer questions specifically, directly, and narrowly relating to the performance of their official duties or pain of dismissal ... without requiring relinquishment of the benefits of the constitutional privilege."

Here, whatever the reach of the Exchange's quasi-governmental status, it had no authority to prosecute defendant criminally or to grant him immunity so that neither his answers nor their fruits could subsequently be used against him in criminal proceedings. See, Lefkowitz, supra, 94 S. Ct. at 325.

The evidence discloses that the Exchange had uncovered a serious problem at Weis; as soon as its investigation disclosed that Weis had been in violation of its rules and SEC regulations, it advised SEC officials, as it was required under law. The first consideration for the Exchange was to determine how viable Weis' financial situation was, and what could be done to cushion whatever losses Weis' customers might be required to suffer. The Exchange initially sought to effectuate a merger with Weis or takeover to save the situation. As its investigation probed more deeply, it became manifest that nothing could save the situation.

The Exchange was not a conduit for passing on the defendant's statement to the government. Its reports to the SEC were general outlines of what the Exchange had learned. Knowledge of the criminal aspects involved came to the SEC first from sources other than the Exchange. At that point, the SEC launched its own investigation, and subpoenaed all documents the Exchange had on the matter. At the time the subpoena was issued, although Lynn and Kubie had already given statements detailing the criminal violations that had occurred, the defendant had not

testified. [illegible] testified on May 17, the day after the Lynn and Kubie transcripts had been subpoenaed. Once transcripts of Lynn and Kubie's testimony were read by the government, the possibility of criminal prosecution became a reality, and on June 1, the government began its criminal inquiry. Under the Churchill, Donaldson and Kordel standard, since the matter had not been referred for criminal prosecution until after defendant's appearance and testimony before the Exchange, the use of his testimony cannot be held to violate his rights.

All during the investigation the Exchange acted in good faith seeking to fulfill its obligations under the law. It did not voluntarily turn over the defendant's or any other statement to the SEC. It complied with a subpoena, as it was required to do. It was foreseeable, on May 17, when the Exchange took defendant's statement that the transcript of what he told the Exchange would reach the government by subpoena. Yet, criminal prosecution was not then a certainty. There were a number of alternatives available to the SEC and, indeed, the first thing the SEC did was to seek injunctive relief. Defendant's argument that this is the first time that the violations involved here had been the subject of criminal prosecution, it seems to me,

weakens his case, and constitutes a concession that the government had various options open before finally deciding to seek the indictment.

On May 17, at the hearing before the Exchange, defendant was represented by counsel. He was compelled to testify in the sense that he realized that if he refused to talk or made false statements, he would be expelled from membership in the Exchange. Too much cannot be made of that, however, since defendant also must have known that the disciplinary action against him by the Exchange as a result of his testimony was a very real possibility. In any event, Garrity and cognate cases are inapposite.

There is no proof of bad faith by the government. There is no showing that it used the Exchange to gather evidence for the instant criminal proceeding, or that it exercised its authority to use the civil process to make out a criminal case. The only showing is that the SEC learned of the possible criminal nature of Weis' problems and decided to pursue criminal prosecution as one of the courses of action available to it. That decision was not the result of collusion between the Exchange and the SEC or bad faith on the part of either. The defendant, therefore, cannot prevail. See, Smith v. Rhay, supra. Accordingly, the motion is denied.

In view of the above disposition of the matter, there is no need to discuss the other points defendant raises.

SO ORDERED.

Dated: New York, New York
June 28, 1974

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

65

ENDORSEMENT DENYING MOTION OF ALAN C. SOLOMON
(Carter, D.J.)

UNITED STATES v. ALAN C. SOLOMON

73 Cr. 693

ENDORSEMENT

Defendant brings to the court's attention United States ex rel. Harry L. Sanney v. Montanye, Slip Op. No. 709 (June 20, 1974), a Second Circuit decision which had not played any part in consideration or determination of the motion to suppress in t the instant case. Defendant contends that Sanney supports its contentions that the motion to suppress should be granted and moves for reconsideration. The court has now studied Sanney and concludes that its rationale is fully consistant with the court's decision on this motion.

In Sanney, there was manifest collusion with criminal investigative authorities to secure incriminating statements from the defendant. Nevertheless, the statements were not suppressed. The rationale of my holding here was that absent proof of such collusion, there is no basis on which a motion to suppress will lie. Sanney is certainly not inconsistent with the result reached, and accordingly, the motion to reconsider is denied.

SO ORDERED.

Dated: New York, New York
July 31, 1974

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

U.S. DISTRICT COURT
FILED
AUG 1 1974
D. OF N.Y.

:bmj
668

STIPULATION OF FACT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

- v - : STIPULATION

ALAN C. SOLOMON, : 73 Cr. 693

Defendant. :

IT IS HEREBY STIPULATED AND AGREED by and between Paul J. Curran, United States Attorney for the Southern District of New York, Henry Putzel, III, Assistant United States Attorney, of counsel, and Arthur B. Kramer, counsel for the defendant ALAN C. SOLOMON, and by the defendant himself personally that if appropriate witnesses were called to testify at the trial of Count 7 of the above-captioned indictment, such witnesses would testify as follows:

1. At all times herein relevant, Weis Securities, Inc. (formerly known as Weis, Voisin & Cannon Co., Inc., and as Weis, Voisin & Co., Inc.)(hereinafter "Weis") was a brokerage firm and member of the New York Stock Exchange and the American Stock Exchange, having its principal place of business at 17 Battery Place North, New York City, New York. Weis transacted a business in securities on its own behalf and on behalf of approximately 50,000 customers and/or accounts. From March, 1972 through June 4, 1973 Weis experienced substantial losses which impaired its net capital and its ability to continue in business.

2. Arthur J. Levine was the Chairman of the Board and Chief Executive Officer of Weis and, as such, had and exercised overall responsibility for Weis' operations.

3. Sol Leit was the President and Chief operating officer of Weis and a director of Weis and, as such, had and exercised primary executive responsibility for the day-to-day operation of Weis and for the preparation and maintenance of current and accurate books and records and of financial reports and statements of financial condition, including those required to be submitted to the United States Securities Exchange Commission, the New York Stock Exchange and the American Stock Exchange and others required to be sent to Weis customers.

4. Defendant Alan C. Solomon ("Solomon") was the Treasurer and an Executive Vice President and a director of Weis. Solomon's primary function at Weis was to supervise the trading of securities for the firm's account and to supervise all other proprietary trading activities of the firm and the execution of securities orders for and on behalf of Weis customers. As Treasurer, Solomon signed the monthly Joint Regulatory Reports submitted to the New York Stock Exchange and the American Stock Exchange, including those referred to in paragraph 11 of this Stipulation but he performed no other duties normally performed by a chief financial officer.

5. Joel Kubie was the Comptroller and an Executive Vice President and a Director of Weis. As Comptroller, Kubie had responsibility for the accounting and related departments of Weis and supervised preparation and maintenance of current and accurate books and records and of financial reports and statements of financial condition, including those required to be submitted to the United States Securities Exchange Commission, the New York Stock Exchange and the American Stock Exchange and others required to be sent to Weis customers.

6. Robert K. Lynn was the Assistant Comptroller and a Vice President of Weis and a subordinate of Kubie.

7. Government's Exhibit 1 is a true and complete transcript of testimony given by the defendant Solomon to the Division of Conduct of the New York Stock Exchange on May 17, 1973.

8. Government's Exhibits 2A-2H are carbon copies of order tickets prepared and executed by the defendant Solomon reflecting the purchase by Weis for its own account, number 80166, of $700,000 in Pan American World Airways, Inc. convertible 4-1/2% bonds due August 1, 1986 (hereinafter, the "Pan Am bonds").

9. Government's Exhibit 3A is a photostatic copy of Weis trading account number 80166 for January, 1973, reflecting that on January 11, 1973, the $700,000 Pan Am bonds were recorded as $700,000 Pan Am bonds due January 15, 1984, and further reflecting that on January 15, 1973, the bonds were transferred from account number 80166 to account number 94219. Exhibit 3B is the original Weis journal entry directing the computer to mis-record the Pan Am bonds as set forth above.

10. Government's Exhibit 4 is the original of a schedule prepared and maintained by Robert Lynn and Joel Kubie summarizing various false entries on the books and records of Weis as at January 26, 1973. Page three of this exhibit, at line 18, reads "Pan Am bonds $208,111" and shows the amount of the over-valuation of the Pan Am bonds referred to above.

11. Government's Exhibits 5 and 6 were each pre- 374a
pared under the supervision of Kubie and Lynn. Each were signed by defendants Levine, Leit and Solomon and filed with the New York Stock Exchange on February 21 and March 21, 1973, respectively, in accordance with applicable New York Stock Exchange and American Stock Exchange rules. The computation supporting items 370, 940 and 970 of each report was arrived at by misvaluing the Pan Am bonds in the manner described above.

12. Government's Exhibit 7A is a photostatic copy of the original Weis journal entry of April 12, 1973, directing the computer to correct the mis-recorded Pan Am bonds as set forth in paragraph 9 above.

13. Government's Exhibit 7B is an original copy of the Weis journal entry of April 13, 1973, directing the computer to transfer the $700,000 Pan Am bonds from account number 94219 to account number 98319.

14. Government's Exhibit 7C is a photostatic copy of the monthly statement for Weis trading account number 98319 for the period ending April 27, 1973, which reflects that on the 19th, 24th, 25th, 26th and 27th of April, 1973, the $700,000 Pan Am bonds above were sold by the firm.

15. Government's Exhibits 8A - 8S are carbon copies of order tickets prepared and executed by the defendant Alan C. Solomon reflecting the sale of the $700,000 Pam Am bonds.

16. Sol Leit, JOel Kubie and Robert Lynn, if called as Government witnesses, would testify that they met with Solomon in a private dining room at Christ Cella's Restaurant, Manhattan, in mid-December of 1972; that one of the subjects under discussion at that meeting was what steps could be

taken to inflate reported profits of Weis; that Solomon suggested that bonds could be purchased which were due in a given year and, after purchase of such bonds, the books could be altered to reflect that the bonds had a due-date which materially increased their value; that Solomon picked as an example the difference in market value between the Pan Am bonds due in 1986 -- which were then selling at approximately $52 -- and Pan Am bonds of identical description due in 1984 -- which were then selling at approximately $80.

17. That Sol Leit and Arthur Levine would testify that, following Solomon's suggestion described above, they directed Solomon to purchase Pan Am bonds of 1986, and, after Solomon had executed such purchases, Leit directed Weis employees under his supervision to change the designation of such bonds on the books of Weis as set forth above.

18. That Sol Leit would testify that Solomon supervised the trading of securities in Weis firm trading accounts numbers 80166, 94219, and 98319.

19. If called to testify as Government witnesses, Arthur Levine, Sol Leit, Joel Kubie and Robert Lynn would each testify that commencing no later than the meeting described in paragraph 16 through April, 1973, they met on a number of occasions with the defendant Solomon both at the offices of Weis and at other locations in New York City and, at such meetings, discussed, inter alia, the following:

a. Weis was losing substantial amounts of money from month-to-month;

b. Joint Regulatory Reports filed for January and February, 1973 (Government's Exhibits 5 and 6) with the

New York Stock Exchange and the American Stock Exchange were false in that, among other items, the unconsolidated income figures therein contained improperly overstated income attributable to the misvaluation of the Pan Am bonds;

c. Government's Exhibits 4, and specifically the item on page 1 thereof, with respect to the misvaluation of the Pan Am bonds.

20. There is no evidence that Solomon participated in physically making any false bookkeeping entries with respect to the purchase, sale and carrying value of the $700,000 in the Pan Am bonds described in the foregoing paragraphs. Specifically, Government Exhibits 3A, 3B, 8A and 8B were prepared by another Weis employee under the direction of the defendant Leit and pursuant to his instructions, as were Exhibits 5 and 6.

21. The difference between the net capital of Weis reported in Exhibits 5 and 6 and the net capital which Weis would properly have reported if the firm had never purchased the $700,000 Pan Am bonds was not material because the firm was required to and did take a 30% "haircut" in valuing the misrecorded Pan Am bonds, pursuant to Rule 325 of the New York Stock Exchange, in making the net capital computation reflected in Exhibits 5 and 6. However, the unconsolidated income figures reported in Exhibits 5 and 6 (Item 370 of each Joint Regulatory Report) were materially affected by the misvaluation of the Pan Am bonds described above.

22. Defendants Leit, Levine and Kubie have all pleaded guilty to Count 1 of the indictment in this case and Leit and Levine have each also pleaded guilty to a separate

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information related to the falsification of Weis records. The defendant Lynn has entered a guilty plea to Count 17 of the indictment and to an information charging him with falsifying Weis records to conceal an unauthorized use of Weis funds by Lynn. Each of the said defendants is awaiting sentence upon these guilty pleas.

24. Defendant Solomon adheres to his objection to the use by the Government of Exhibit 1 for purposes of obtaining his indictment for and as evidence to prove the crime alleged in Count 7 of the indictment, for the reasons set forth in the various memoranda of law submitted on his behalf in support of the motion to suppress use of that testimony and to quash the indictment; and in entering into this Stipulation, Solomon has not waived such objections, but, on the contrary, specifically reserves his right to appeal, on the basis of such objections, from any judgment of conviction which may be entered against him on the basis of this Stipulation.

Dated: New York, New York
July 3, 1974.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

By: Henry Putzel
HENRY PUTZEL, III
Assistant United States Attorney

Arthur B. Kramer
ARTHUR B. KRAMER
Attorney for the defendant

Alan C. Solomon
ALAN C. SOLOMON

EXHIBIT - EXCERPTS OF MINUTES OF TESTIMONY OF ALAN C. SOLOMON BEFORE SECURITIES & EXCHANGE COMMISSION DATED MAY 17, 1973
[Pages 1 to 22 and 96 to 98]

N E W Y O R K S T O C K E X C H A N G E, I N C.

DEPARTMENT OF MEMBER FIRMS

* * *

New York, May 17, 1973
(11:30 A.M.)

MR. ALAN C. SOLOMON, Executive Vice-President-Treasurer-Director, Weis Securities, Inc., appeared before Messrs. Dennis Pape, Special Counsel; Stuart Fields, Senior Conduct Investigator; and Aubray J. Womack, Principal Examiner, of the Department of Member Firms, when the following discussion took place:

Also Present: Alan M. Hoffman, Esq., of Shereff, Friedman, Hoffman & Goodman, Counsel for Mr. Solomon.

MR. PAPE: Mr. Solomon, for purposes of identification, I am Dennis Pape, Special Counsel to the staff of the Department of Member Firms; on my right is Mr. Stuart Fields, Senior Conduct Investigator for the Conduct Division of the Department of Member Firms; and sitting opposite us is Mr. Aubray Womack, Principal Examiner of the Exchange.

The Board of Directors has authorized us to

require members, allied members and employees of members and member organizations to appear and testify in connection with investigations. I should also like to remind you that a person who is adjudged to have made a misstatement upon a material point to an officer or employee of the Exchange so authorized by the Board of Directors may be suspended or expelled for said misstatement.

Is that clear?

MR. SOLOMON: Yes.

MR. PAPE: For the record, you are appearing here today with Mr. Hoffman, and he is your counsel for this --

MR. SOLOMON: Yes, he is.

MR. PAPE: Thank you.

BY MR. PAPE:

Q. Mr. Solomon, when did you join the securities industry?

A. June, 1960.

Q. And when did you join Weis, Voisin, Cannon?

(At this time Mr. Womack left the room.)

A. January, 1964 or January, 1965; I don't

have the years straight.

Q. And what was your position there?

A. I was a member of the American Stock Exchange.

Q. And am I correct in assuming that until the early part of 1972 your functions with the firm involved either Floor trading or trading of securities for the firm?

A. Yes.

Q. And in 1972, approximately when did this change?

A. I don't know how -- should I say I was elected treasurer?

Q. That is what I am interested in.

A. I was elected treasurer of the firm in March, 1972.

Q. And up until December, 1972, what functions did you serve as treasurer?

A. I signed certain documents and reports.

Q. Did you do anything in the way of preparing these reports, or reviewing them for accuracy at this time?

A. No.

Q. What other positions were you holding in the firm of Weis, Voisin, Cannon in December, 1972?

A. In December, 1972 I was treasurer, I was executive vice-president, I was a member of the Board of Directors, I was a member of the executive committee, and as executive vice-president I was executive vice-president in charge of our trading and order room functions.

Q. Prior to December, 1972, were you aware of any improprieties in the reporting or bookkeeping of Weis, Voisin, Cannon?

A. No.

Q. Would you please state whether or not you became aware of any improprieties from December on.

A. Yes, I did.

Q. Okay.

Could you please relate, for the record, what these improprieties were, and relate how you became aware of them.

A. Towards the end of December, beginning of

January, I went to a meeting with Mr. Leit, Mr. Kubie, Mr. Lynn and myself --

Q. Mr. Kubie was controller at this time, and Mr. Lynn was assistant controller?

A. That is correct.

Q. And what was Mr. Leit's function?

A. Mr. Leit was president, chief operations officer. I was --

MR. HOFFMAN: May I interrupt. May we go off the record?

MR. PAPE: Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. (Continuing) We met at Christ Cella's Restaurant. The purpose of the meeting was to find ways of showing -- of improving our earnings picture. We discussed reevaluations of restricted stock, we discussed reevaluations of inventories, and various other things that I can't specify. And I came up at that meeting with the plan of taking a position in Pan American convertible bonds 4 1/2's 1986, which were selling at

around 52, and misevaluating them as Pan Am's 4 1/2's 1984, which were selling around 30.

Q. Does this mean that you didn't own the position at that time, and they were going to be bought?

A. I had traded the bonds on and off for a number of years. Whether I had a small position, it doesn't matter. The balance of the position was taken on after this meeting.

Q. And what was that position?

A. We bought seven hundred bonds.

Q. Please continue.

MR. HOFFMAN: May I go off the record again?

MR. PAPE: Yes.

Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. In January, I would guess towards the middle, around the 15th to the 20th, and that is just a guess of date, but I would imagine around there, we had a meeting. I don't remember the location. It was probably either at Mr. Leit's apartment or Mr. Levine's

apartment. It was attended by Mr. Kubie, Mr. Lynn, Mr. Leit, Mr. Levine and myself. We discussed the P&L picture for the firm. At this meeting it was mentioned that for seven months through December, where our books were showing approximately a break-even, that we had a loss which was not reflected on the books of somewhere between three and three and a half million dollars. This was very inconceivable to me to be a proper figure, because I believed that, number one, in December we had made close to a million dollars because we had a good retail month, we had an underwriting, a twenty million dollar underwriting, Pease & Elliman Realty Trust, and that if this was true, then since our audit it meant that for the other six months we had to be losing at the rate of $700,000 a month, which was totally inconceivable to me because I was under the impression that our break-even was somewhere around two million four to two million five a month, and that the gross volume that we had done during this period could no way have generated that type of loss.

Upon hearing this and arguing this point, I

asked questions about our Stock Exchange 325 ratio, where I was assured that our ratio was still intact and proper, and that these differences were on non-good ratio items, furniture and fixtures, things that were disallowed for 325 ratio but, you know, could inflate the earnings.

Q. And who told you these things?

A. It would either -- I would guess that it was Mr. Kubie. I am not positive it was. It would have been either Mr. Kubie, Mr. Lynn or Mr. Leit.

MR. HOFFMAN: Can we go off the record?

MR. PAPE: Surely.

(Discussion off the record.)

MR. PAPE: Back on the record.

Q. Please continue. Is there anything more on that meeting?

(At this time Mr. Womack entered the room.)

A. Yes. We instructed --

Q. Who is "We"?

A. Mr. Leit, Mr. Levine and myself.

To find out where we really stood here, it was necessary to work up an accurate break-even calculation,

and to find where, you know, where we stood and what kind of volume levels we had to do to be able to break even. I think it was also mentioned at this meeting, although my timing on what was mentioned at which meeting is not all -- you know, I can't be positive on it -- it was mentioned -- that I mentioned that Joel Kuble had mentioned to me at the end of April, which was after we had moved into our new building and taken on our big increased overhead by picking up our new rent, had mentioned a two million four break-even level to me. Bobby Lynn had said he had arguments with Joel that the break-even was somewhat more, in the neighborhood of two million seven. And they said they thought it was closer to three million at this point. We told them to go back and work up a new break-even figure.

Q. Now, at this meeting was there any accounting schedules, or anything presented at this meeting?

A. There must have been some, but I am not sure exactly what was presented and what was not presented. There were schedules that I know were presented at other meetings that were not at this meeting and -- can I go off the record for a second?

MR. PAPE: Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. (Continuing) At later meetings there was a schedule of "woodwork," -- put that in quotes, I guess -- which was not presented at this meeting.

Q. And, basically, the word "woodwork," means what is hidden in the woodwork?

A. Woodwork means, what is hidden in the woodwork and not reflected on the books.

Q. Now, at this meeting it was admitted to you that there was a conscious effort under way in the last seven months either to overaccrue or to underaccrue income, or to not record or overrecord assets or liabilities?

A. I received the impression at this meeting that a very, very conscious effort had been made to beef up earnings, hide losses, or whatever.

I was concerned about two things on hearing this. I was also concerned about the P&L picture, but I was concerned mainly with our Stock Exchange ratio, so that if we had a business that was losing money we

were not out of ratio and could continue to be in business, and that our ratio was proper.

And I was also concerned about using of customers' segregated securities. I asked about this, and I was assured, I believe by Mr. Leit, that segregation was clean and being properly handled.

Q. And you mentioned before that they were using bad assets to hide these items, is that correct?

A. Yes. The impression I got was that this unresolved loss was in items like overcapitalization of goodwill. I think they mentioned here that they had an insurance claim of Winslow, Cohu, an insurance claim which they carried in -- which they were not using for good 325 capital, but which they carried on their books which improved the P&L picture, but it did not improve the 325 capital picture since it was not good capital.

Q. Now, the Pan American bonds, how soon after that dinner meeting were they purchased?

A. I would say, within the next week.

Q. And this was -- and this position was kept for how long?

A. I think this position was liquidated between -- as an approximate date, it was started to be liquidated towards the end of March, and the liquidation was completed in the beginning of April.

Q. And it was your understanding that for the end of January and the end of February these positions were improperly valued for capital purposes?

A. Yes.

Q. What subsequent meetings took place, and what were you made aware of?

(At this time Mr. Fields left the room.)

A. The next meeting that I remember, and it is difficult, you know, to pinpoint, you know, meetings because I don't have a written record of them, I think there was another meeting in January where we got this three million two break-even, you know, laid out, and we went to work --

MR. HOFFMAN: May I interrupt at this point?

MR. PAPE: Surely.

MR. HOFFMAN: I think it might be useful to give his reaction to the information that was presented

at some point himself, as well as, if you wish, the reactions of others.

A. (Continuing) So, we went to work on setting up a procedure to put in massive cuts to reduce the break-even level of the firm, so that drain of capital that was obviously coming from these losses --

MR. PAPE: May I interrupt for a moment.

Counselor, is this the reaction that you are talking about, or are you talking about his reaction to finding out that the books were not quite accurate, to say the least?

MR. HOFFMAN: Yes. I think that at some point the record should show that, you know, what his reaction was upon finding out these things.

Q. If you will, Mr. Solomon.

A. Okay.

I would say, at this time I heard that, you know, as I arrived at, you know, a formula which I think I mentioned before, that it was impossible for us to have this much woodwork, or whatever, because we couldn't have lost that much since the audit in any way, and I

heard that some of these losses existed prior to the audit.

Q. Now you are saying you heard this at these meetings?

A. I can't tell you the exact meeting. You know, I can't tell you the exact meeting I heard it at.

Q. What was your first reaction when you found out the books and records weren't accurate at this meeting in January?

A. I was very upset. I was concerned for the business. I was quite surprised. But, most importantly, I was concerned for the business, and I was concerned to find out, are we in ratio; are we in danger of being put out of business tomorrow morning because, you know, we were out of compliance with New York Stock Exchange regulations.

You know, the first thing -- my first reaction to this thing was, what are we doing? Are the books good capital? Are the things that are wrong on the books being used for good capital, or being used, you know, just to beef up earnings? Because at this point, more than the

earnings picture, which as a businessman I am very concerned with, I was more concerned with, you know, seeing that we had the ability to stay in business, meet our obligations and correct our situation.

Q. And the impression you were given is that the assets that were being beefed up were not capital assets?

A. Were not capital assets.

Q. Would you please continue, chronologically.

A. I went away then. This was the beginning of February. Now, I mentioned, I think, two meetings. Whether you could come and say there were three meetings, I have no record of it. But I mentioned two, and that's about what I remember. And then I went away.

I got a call while I was away --

Q. Where were you, by the way?

A. I was at Little Dix Bay in the Virgin Gorda, G-o-r-d-a.

I got a call from Mr. Leit that we had -- that they had instituted a program of massive cuts that would reduce our break-even level by about $400,000 a

month, and that I should come back to help them implement the cuts. I told them whatever cuts they decided they would like to do, I will go along with, but that I was not coming home early from vacation, from my vacation; I was not because I had come home early from my vacation the year before.

(At this time Mr. Fields entered the room.)

Q. Please continue.

A. I came home from my vacation somewhere in the middle February and we had a meeting where we went over the cut program, and where we were going to cut.

Q. Who was "we"?

A. I'm not sure. I think there were two. I think there was one with the executive committee, and I think there was another one at Mr. Lait's house with Mr. Kubie and Mr. Lynn, where in that meeting we were going over items with individual departments, like how we would try to structure a deal for, as an example, Jerry Murphy in our foreign department, a deal where we would make more money off of it and it would be a deal he would accept and still stay with us, since we felt he

was a very valuable thing. We also went through evaluations of other departments to see if they were, you know, worth having, you know, worth having the department, or should the department be closed down, et cetera, et cetera.

Q. Were any improprieties discussed at these meetings?

A. I do not think so, although some joking remarks could have been made about, "We got big problems." At this point, while I knew we had serious problems, and I knew things were very wrong, I did not believe our capital situation was in terrible, terrible jeopardy. I felt our capital situation was still fairly whole.

The only other things that was happening at this point is that we were facing a month of February that looked like it was disaster from a P&L point of view.

Q. Now, in this period of time, did you sign a joint regulatory report for the month of January?

A. I did sign a joint regulatory report for the month of January.

Q. And at this time you were aware that the figures reported thereon would be inaccurate, is that correct?

A. At this point --

MR. HOFFMAN: Can I say something off the record?

MR. PAPE: Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. I knew at this point that there were certain things in the report that were not correct, but they were minimal. The one thing I knew for sure was the Pan Am bonds, but I still believed that by and large the ratio was very close to correct.

Q. Did you know whether or not the loss of five hundred plus thousand dollars that was reported was accurate?

A. Yes. I believe that was an accurate report of a loss. I still think that, by the way, because one of the things -- I got to go back. Now I'm confused.

Did we report five hundred in January as a loss?

Q. It is over $500,000, in that range.

MR. HOFFMAN: Can we go off the record?

MR. PAPE: Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. I believe that loss was correct, and I believe it today that that was what we lost in January.

Q. Now, could you please continue. What else took place in the month of February?

A. Okay.

In the month of February we were working very hard on putting in cuts, you know, getting this cut program instituted so that we could get it into effect as quickly as possible without losing our whole system, et cetera, et catera.

In addition to that, we continued to have meetings with Kubie, Lynn, Levine, Leit and myself. In these meetings a schedule was presented of woodwork, whereas this schedule was not as detailed as a later schedule for the end of March, and it gave a list of items and we tried in these meetings to determine the items that were improper on the books, whether they were being used for good capital or for bad capital.

(Discussion off the record.)

MR. PAPE: Back on the record.

Q. I have handed you a number of documents that you have examined. One of them is dated 1/26/73, and it is represented to us to be a woodwork schedule for that period. Have you ever seen that one document?

A. I am not sure that I have ever seen this one, but I think that I probably have. I say that because it doesn't detail -- you know, it really doesn't detail what it is. What it looks like to me is a P&L statement as to what our P&L statement really should have been, and it doesn't seem to show, as close as I can tell, where the difference between what our P&L statement was on the books and what our P&L statement is, and this doesn't show where the items are. So, I presume that I did see this, and I presume that this evoked the question, "Well, where are these things?" This is the one that evoked the question, "Where are these differences? Are we using them for good capital or are we just inflating our P&L and we are not affecting our 325 capital." So, I presume that I did see this, although I can't say that I did or didn't for sure.

Q. The second document is dated February 23,

1973. Have you ever seen that one before?

A. Yes, I did.

MR. PAPE: Will the Reporter please mark the January one as Exhibit 1 and the February one as Exhibit 2.

(Whereupon, documents described above were marked Exchange Exhibits Nos. 1 and 2, respectively.)

Q. Now, would you please continue discussing what took place at these meetings in the month of February.

A. Well, in the month of February, I don't know how many meetings, you know, there were after I returned back from vacation. This Exhibit 1 here, which I believe that I did see, at the end of one of them it did not break down, as I said, where the understatement of loss was, and the questions that we tried to --

Q. When you say "we" --

A. When I say "we," Sol Leit, Arthur Levine and myself, tried to come up with here, and the question I tried to answer certainly in my own mind was, were the items that deflated our loss, or reduced our loss, were they being used for good capital or were they not.

Q. Now, let me ask you a question: During this period, January, February, was this the first you

had ever known that the bookkeeping of the firm was not being done accurately and was being done improperly?

A. I must answer -- I have to answer that question as I sit today. These things became more and more apparent to me. I can think back and say, maybe I should have known something then. I had no conception of the scope of this, at any rate. I did feel that we had often pushed earnings by capitalizing something, or something of this sort. I felt they were legitimate bookkeeping entries that could be, and some of them were, you know, legitimate things. I am trying to --

MR. HOFFMAN: Could we stop for a second?

MR. PAPE: Off the record.

(Discussion off the record.)

MR. PAPE: Back on the record.

A. In other words, while I believe that the accounting might not be the most conservative accounting in the world, I believed the accounting was totally legitimate accounting. While it might not be the most conservative, I believe it had been approved by our auditors who had audited it, and said it was absolutely fine.

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jt

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MR. FIELDS: No questions.

MR. PAPE: I believe that will end our side of this interrogation.

Counselor, we had discussed off the record that possibly in closing you would like to ask your client a number of questions, either to clarify the record or clarify his position in this matter.

MR. HOFFMAN: Well, I think that the only thing I would like Mr. Solomon to indicate in closing, at this point at least, is what he thought he was doing when all of this was going on, why was this happening --

MR. SOLOMON: Well, I will say this --

MR. HOFFMAN: -- from his point of view.

MR. SOLOMON: I will say this: From my point of view, when these things came into my knowledge, and they came in slowly because I didn't believe them -- maybe I didn't want to believe them, maybe I didn't understand them all -- anything I did, and I know I did a number of things here that are wrong and I regret doing, I was trying to get together enough time to give Arthur Levine, who I had great confidence in, and the rest of the firm

a chance to work out these problems and put the firm on a sound basis, and preserve my fellow stockholders, myself, and a business which I have put a lot of time and effort into. And I think my thoughts were misguided -- I don't think, I know. I know my thoughts were misguided, in that my actions were improper. But it was done -- from my mind, what I thought I was doing was trying to hold something together, to put it in shape so that it could start anew to be a good and profitable business.

MR. HOFFMAN: And one more thing. We had discussed this the other day. You mentioned that throughout this period you felt that the firm had no cash flow problem, at least not towards the end, that the firm basically was in a sound cash flow position, that it was able to meet its obligations to customers, to other brokers, to creditors generally.

MR. SOLOMON: I believe that is a fact. I believe that it still has done that. To the best of my knowledge, you know, even at this point, while accruals on the books, as we have gone through before, might have been undersecured on the books, when bills

were presented they were paid, securities were paid for that were delivered, customers were sent their checks, segregation was clean, securities were not used improperly, and the business, while obviously to me at this point is either out of compliance with regulations or very close to out of compliance with regulations, it was not an insolvent business not capable of meeting its obligations.

MR. PAPE: We have no further questions. I want to thank you for your cooperation.

We will close the record at this time.

(Whereupon, at this time, 5:30 P.M., the record was closed.)

Howard N. Gilbert
Committee Reporter

jt

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS INC.

US COURT OF APPEALS: SECOND CIRCUIT

USA,

Appellee,

against

SOLOMON,

Defendant-Appellant

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 250 West 146th Street, New York, New York

That on the 14th day of November 1974 at ~~Foley Q~~ Foley QSquare, New York deponent served the annexed ~~Appellan~~n Appellant's Appendix upon

Paul J. Curran

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

James Steele

Print name beneath signature

JAMES STEELE

Sworn to before me, this 14th day of aNovember 1974

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975